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ABSTRACT

The 1967 Elementary and Secondary Education Act Title VII generated national attention to the demands of Chicano, Puerto Rican, Chinese, Native American, and other groups for bilingual-bicultural education. The May 1970 Memorandum clarified the availability of the 1964 Civil Rights Act Title VI to advocates seeking such programs. In Lau v. Nichols, the Supreme Court left open the question of what kind of programs would meet Title VI standards. Thus legal advocates for bilingual-bicultural education have to be knowledgeable in the elements of bilingual-bicultural education philosophy, program and planning. Intended for use by legal service lawyers and other community advocates requiring quick access to the basic law of bilingual-bicultural education, these materials suggest various ways to obtain such programs. Topics covered are: the nature and effects of language exclusion, complaints and other litigation materials, relief, desegregation and bilingual-bicultural education, Federal and State laws, and types of programs. The 11 court decisions covered are: Lau v. Nichols, Serna v. Portales, U.S. v. Texas, Bradley v. Milliken, Martinez v. Santa Maria Independent School District, Morgan v. Kerrigan, Evans v. Buchanan, Morales v. Shannon, Aspira v. Board of Education of the City of New York, U.S. v. Board of Education of Waterbury, and Keyes v. School District No. 1 Denver. (NQ)

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BILINGUAL-BICULTURAL EDUCATION:

A Handbook for Attorneys and Community Workers

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Table of Contents

Introduction 1

I. The Nature and Effects of Language Exclusion 4

- A. Amicus Curiae Brief in Lau v. Nichols 5
- B. Memorandum, Proposal, and Critique of Plaintiffs-Intervenors, submitted by Hispanic Intervenors in Boston School Desegregation case 8
- C. "An Education Plan for the Denver Public Schools" 10

II. Decisions 17

- A. Lau v. Nichols 19
- B. United States v. Texas 24
- C. Aspira v. Board of Education of the City of New York 33
- D. Serna v. Portales Municipal Schools 34
- E. United States v. Board of Education of Waterbury 45
- F. Aspira v. Board of Education of the City of New York 46
- G. Morgan v. Kerrigan 47
- H. Evans v. Buchanan 48
- I. Morales v. Shannon 49
- J. Keyes v. School District No. 1, Denver 50
    - 1. District Court Decision 50
    - 2. Court of Appeals Decision 52
- K. Bradley v. Milliken 57

III. Complaints and Other Litigation Materials 58

- A. Complaint in Aspira v. Board of Education of the City of New York 59
- B. Plaintiffs' Memorandum of Law in Aspira v. Board of Education of the City of New York 71
- C. Complaint in Rios v. Read 106
- D. Complaint in Intervention in Evans v. Buchanan 112
- E. Plaintiffs-Intervenors' Motion for Further Relief in United States v. Texas 115
- F. Plaintiffs Intervenors' Interrogatories in United States v. Texas 123

IV. Relief 146

- A. Consent Decree in Aspira v. Board of Education of the City of New York 147
- B. Memorandum in Aspira v. Board of Education of the City of New York 152
- C. Plaintiffs' Reply Memorandum in Aspira v. Board of Education of the City of New York 161
- D. Memorandum of understanding in Martinez v. Santa Maria Independent School District 173
- E. Response to the Mandate of Lau v. Nichols by Citizens Task Force for Bilingual Education 180

V. Desegregation and Bilingual-Bicultural Education 191

- A. Memorandum, Proposal and Critique of Plaintiffs-Intervenors, Boston School Desegregation case 192
- B. "Bilingual Education, Segregation, and a Third Alternative" by Jose A. Cardenas 219

VI. The Applicable Federal Law 221

- A. Title VI of the Civil Rights Act of 1964 222
- B. Regulations, Title VI of the Civil Rights Act of 1964 223
- C. Interpretative Memorandum of HEW, May 25, 1970 224
- D. HEW Memorandum on "Evaluation of Voluntary Compliance Plans Designed to Eliminate Educational Practices Which Deny Non-English Language Dominant Students Equal Educational Opportunity," Summer 1975 225
- E. Equal Educational Opportunity Act of 1974 239
- F. Bilingual Education Act of 1974 240
- G. Federal Expenditures on Bilingual Education in Fiscal Year 1973 245
- H. List of Federal Laws (and Implementing Regulations) with Some Funding for Bilingual Education 246
- I. "Organizing for Bilingual Education: One Community's Experience" by Aida Waserstein 247

VII. State Laws 251

- A. Massachusetts Transitional Bilingual Education Law and Implementing Regulations 252
- B. Texas Bilingual Education Law 271
- C. Legislation and Expenditures by States on Bilingual/Bicultural Education Programs, for years 1973-74 and 1974-75 273
- D. List of State Laws on Bilingual Education 274

VIII. Types of Programs and Other Issues 281

- A. Description of the Bilingual-Bicultural Education Program in the Crystal City Independent School District (Texas) 282
- B. Educational Philosophy of the El Paso Independent School District 286
- C. Program Models Submitted in Aspira v. Board of Education of the City of New York 303
- D. "Training Teachers for Bilingual/Bicultural Education" by Nelson Vieira 343
- E. Characteristics of different types of Bilingual/Bicultural Education Programs 345

Introduction

In a relatively few years bilingual-bicultural education has gone from a somewhat esoteric subject of debate at linguistics conferences to a recognized, educationally sound demand of non-English speaking minority groups. There is nothing recent, however, to the historical fact that language and culture have been used as political and economic weapons against minority groups. What is new is the beginning public acceptance of the fact of massive educational deprivation being suffered by non-English speaking children and with it recognition that the problem lies not with the language and culture of the children but rather in the response of schools to such children.*

A useful starting point for the present period is the passage of Title VII of the Elementary and Secondary Education Act of 1967. See 20 U.S.C. 880b _et seq_. Although the act itself was designed to fund limited duration pilot programs in local districts, its passage generated national attention to the demands of Chicano, Puerto Rican, Chinese, Native American and other groups for bilingual-bicultural education. Three years later the Department of Health, Education and Welfare released an interpretation of Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d _et seq_.) which clarified the Act's applicability to non-English speaking children who were being denied the benefits of participation in federally funded programs. That interpretation, known as the May 1970 memorandum**, made clear the availability of Title VI to advocates seeking bilingual-bicultural programs. Unfortunately, by stopping short of a clear requirement of bilingual-bicultural education programs, HEW left open the question of what kind of language programs would satisfy the requirement of non-exclusion of linguistic minority children. This omission, while regrettable, was probably an accurate reflection of the level of political acceptance of true bilingual-bicultural education. For while

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[*] Although there appears to be no one universally accepted definition of bilingual-bicultural education, our use of that term is meant to indicate a process of total self-development by which a person learns and reinforces his or her own language and culture while at the same time acquiring the ability to function in another language and act on occasion according to patterns of the second culture. Thus bilingual-bicultural education may be contrasted both with bilingual schooling or the use of two languages to present curricula and other language techniques such as English-as-a-Second-Language (E.S.L.) which may place even less emphasis on a child's home language and culture. See also 19 _Inequality in Education_ 3, definitions set forth in "Introduction" to issue on bilingual-bicultural education.

[**] The memorandum appears at page 224, _infra_.

many legislators and educators could be persuaded that there were denials of equal educational opportunity to non English speaking children, the favored response was one of compensatory or transitional language programs with an eye toward enabling the children to function in English as soon as possible. This has been the approach taken by most states which have passed bilingual education laws and is consistent with the Supreme Court's landmark but fragmentary opinion in Lau v. Nichols, 414 U.S. 563 (1974), which left open the question of what kind of programs would be required in meeting Title VI standards.

Thus legal advocates for bilingual-bicultural education had to become knowledgeable in the elements of bilingual-bicultural education philosophy, program and planning. This expertise has acheived significant results in remedy phase hearings or consent decrees and seems indispensable to anyone contemplating litigation in this area.

In the Summer of 1975, HEW sent to all Chief State School Officers a new memorandum titled "Evaluation of Voluntary Compliance Plans Designed to Eliminate Educational Practices Which Deny Non-English Language Dominant Students Equal Educational Opportunity."* This memorandum states, in part (explanation added):

> School districts found to be in non-compliance with the aforementioned provisions of Title VI [regulations and May 1970 memorandum as construed in Lau] will be required to develop specific voluntary compliance plans to eliminate discriminatory educational practices (including the effects of past practices). Voluntary compliance plans which set forth educational strategies consistent with the approaches outlined in this document and which contain the other elements specified therein, will be accepted by this Office. School districts submitting voluntary compliance plans to this Office which are not consistent with the outlined approaches or with other required plan elements must demonstrate affirmatively, at the time of submission, that such plans, at a minimum, will be equally effective in ensuring equal educational opportunity.

The new HEW memorandum contains sections on (I) identifying a student's primary or home language; (II) diagnosing each student's educational needs and prescribing "an educational program utilizing the most effective teaching style to satisfy the diagnosed educational needs"; (III) implementing appropriate educational programs, described in detail in the memorandum; (IV) reviewing required and elective courses to show that they are not designed to have a discriminatory effect; (V) instructional personnel requirements; (VI) racial/ethnic isolation and/or identifiability of schools and classes; (VII) notification to parents of students whose primary or home language is not English; and (VIII) evaluation.

One significant aspect of the memorandum is the description of acceptable programs in Part (III). In general, transitional bilingual education, bilingual-bicultural, and multilingual-multicultural programs are approved without qualification and English-as-a-Second-Language programs are not approved, or approved in only certain situations. It is important to study this section carefully because the appropriate program turns upon the particular student's age and language proficiency.

An unanswered and critical question is the extent to which courts will rely upon the standards set forth in the new HEW memorandum in formulating relief. In the past, in some school desegregation cases, courts did rely on analogous HEW standards. For example, in United States v. Jefferson County Board of Education, 380 F.2d 385, 390 (C.A. 5)(en banc), cert. denied sub nom. Caddo Parish School Board v. United States, 389 U.S. 840 (1967), the court stated:

> In constructing the original and revised decrees, the Court gave great weight to the 1965 and 1966 HEW Guidelines. These Guidelines establish minimum standards clearly applicable to disestablishing state-sanctioned segregation. These Guidelines and our decree are within the decisions of this Court, comply with the letter and spirit of the Civil Rights Act of 1964, and meet the requirements of the United States Constitution. Courts in this circuit should give great weight to future HEW Guidelines, when such guidelines are applicable to this circuit and are within lawful limits....

See also Kemp v. Beasley, 389 F.2d 178, 185 (C.A. 8, 1968). Note the court's reference in Jefferson to "guidelines...within lawful limits."

Throughout the materials, and in particular in Part III on decisions, the reader will note how frequently the central issue is the one left open by Lau: how far can a court go in mandating a meaningful program? The issue is not settled, and the decisions are not always favorable. See, for example, the appellate decision in Keyes at p. 52, infra.

These materials are intended to be a convenient source for legal service lawyers and other community advocates who need quick access to the basic law of bilingual-bicultural education. The materials suggest various ways in which lawyers may aid their clients in obtaining bilingual-bicultural education programs, for example:

- implementation or enforcement of a state law or policy; see Part VIII;

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[*] The memorandum appears at pp. 225 to 238, infra.

- locating sources of federal or other funding to facilitate a local district's decision to initiate a program; see p. 247;

- federal court litigation based upon Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, and Section 204f of the Equal Educational Opportunity Act, 20 U.S.C. 1703(f), or intervention in a school desegregation case, and seeking relief based upon the Summer, 1975 HEW memorandum or a state law; see Parts III, IV, and VII.

Those who desire to read further in this area can secure the following materials:

- Issue Nineteen of Inequality in Education, published in February 1975 by the Center for Law and Education, focused on bilingual-bicultural education, containing the following articles: Gonzales, "Coming of Age in Bilingual/Bicultural Education: A Historical Perspective"; Cardenas, "Bilingual Education, Segregation, and A Third Alternative"; Waserstein, "Organizing for Bilingual Education: One Community's Experience"; Lewis, "The Massachusetts Transitional Bilingual Education Act: Two Years After"; Roos and Roos, "The Massachusetts Transitional Bilingual Education Act: Problems in the Classroom and Possible Legislative Responses"; Vieira, "Training Teachers for Bilingual/Bicultural Education"; Salganik, "Fox Point: The History of a Portuguese Bilingual Program"; Rice, "Recent Legal Developments in Bilingual/Bicultural Education."

- Andersson and Boyer, Bilingual Schooling in America (1970), United States Government Printing Office, Washington, D.C., 20402 (two volumes, 620 pages). These materials include, inter alia, an extensive bibliography, definitions and descriptions of programs.

- A Better Chance to Learn: Bilingual-Bicultural Education (1975), United States Commission on Civil Rights, Washington, D.C. 20425, Clearinghouse Publication No. 51 (254 pages). This publication includes a 10-page bibliography; an historical overview of language minorities and education, including an analysis of the shortcomings of the "English as a second language approach"; descriptions and evaluations of various existing bilingual-bicultural programs; a legal analysis entitled "Constitutionality of the Right to Equal Educational Opportunity"; federal policy on bilingual education; and state policy on bilingual education, including the texts of the Massachusetts, Texas and Illinois laws.*

As local experience begins to develop we hope that you will keep us informed as to your efforts so that we may help others to learn from your practice. In the broadest sense, the struggle for bilingual-bicultural education is a political struggle for educational resources, employment opportunities and cultural identity. Therefore, while the focus of this packet is on lawyers and litigation, we cannot overemphasize the importance of an active client community as the ultimate guarantor of success.

Finally, it is important to note that this is a developing area of the law. Lawyers utilizing these materials must be attentive to new statutes, regulations, decisions, etc. Legal service attorneys (and subscribers) will be able to follow developments in the Center for Law and Education's Education Law Bulletin (topic number 20).

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*Periodic bulletins on bilingual-bicultural education, including bibliographies, are prepared by the ERIC Clearinghouse on Language and Linguistics, Center for Applied Linguistics, 1611 North Kent Street, Arlington, Virginia 22209.

I. The Nature and Effects of Language Exclusion

The following excerpts from the Center's amicus brief in Lau v. Nichols, and a memorandum of the Hispanic intervenors in the Boston School Desegregation case, Morgan v. Kerrigan, illustrate the practical effects of language exclusion.* These materials will give the reader ideas on how to develop facts showing the adverse impact of the failure to address in the local community the problem of students whose primary language is not English. "The Cardenas-Cardenas Theory of Incompatibilities," an excerpt from "An Education Plan for the Denver Public Schools" prepared by Dr. Jose Cardenas, National Education Task Force de La Raza, explains how school failures of black and Mexican-American children "can be attributed to a lack of compatibility between the characteristics of minority children and the characteristics of typical instructional programs."**

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*See also Serna v. Portales Municipal Schools, 499 F.2d 1147, 1149-50 (C.A. 10, 1974), p. 34, infra; Aspira of New York v. The Board of Education of the City of New York, C.A. No. 72. Civ. 4002 (MEF), Complaint, pp. 11-17, p. 59 infra.

**The Cardenas Plan as supplemented by an addendum designed to adapt it to specific conditions in Denver schools, was approved as a part of the relief by the district court in the Denver school desegregation case. See Keyes v. School District No. 1, 380 F.Supp. 673, 692, 694-96 (D.Colo., 1974). However, this aspect of the district court opinion was rejected on appeal. See 521 F2d 465, 479-83 (C.A. 10, 1975). See text of pertinent parts of Keyes opinions at p. 50, infra.

A. Amicus Curiae Brief in *Lau* v. *Nichols,* 414 U.S. 563 (1974), Submitted by Center for Law and Education (excerpts)

• • •

In this case, however, petitioners assert that they in no sense receive a minimally adequate education. Indeed, they assert that, being unable to communicate or understand the language of instruction, their educational opportunities are wholly unequal to those of English-speaking children.

That children from non-English speaking language minority groups suffer grave deprivations of educational opportunity is a national tragedy of great proportion.[1]

Recently the United States Senate Select Committee on Equal Educational Opportunity completed three years of investigation into the way American public education serves minority group children. In its final report the Committee stated: "It is the conclusion of this committee that some of the most dramatic, wholesale failures of our public school systems occur among members of langauge minorities . . . [w]hat these conditions add up to is a conscious or unconscious policy of linguistic and cultural exclusion and alienation.''[2] The Committee found that twenty-three percent of the total school enrollment in New York City is made up of Puerto Rican children. Yet in 1963 only 331 of 21,000 (1.6%) ''academic'' diplomas granted in New York went to such children.[3] In other cities the picture is no brighter. In Newark, for example, there were 7,800 Puerto Rican students in the public school system but only 96 survived to the twelfth grade while in Chicago the dropout rate among Puerto Rican students approached sixty percent.[4] Among Mexican-Americans the language barrier poses equally severe educational difficulties. Some fifty percent of this group never go past the eighth grade. In Texas, for instance, forty percent of the Spanish-speaking citizens are described as ''functional illiterates.''[5] Among Cherokee Indians the school dropout rate runs to seventy-five percent with illiteracy among adults at forty percent.[6]

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[1] The U. S. Department of Health, Education and Welfare has estimated that there may be five (5) million public school children in the country who speak a language other than English in their homes. U. S. Department of Health, Education and Welfare, "Draft: Five Year Plan, 1972-77: Bilingual Education Program" (August 24, 1971). Among those directly affected by the decision below are many of the approximately 740,000 Spanish surnamed students in Arizona, California, Idaho, Montana, Nevada, Oregon and Washington — or 37% of the total number of Spanish surnamed students in the United States. United States Commission on Civil Rights, *Mexican American Education Study* (April, 1971) p. 16. Also affected will be many of the 64,000 American Indian children in those states — approximately 33% of the total number of Indian students nationally. Report of the Committee on Labor and Public Welfare and Committee on Interior and Insular Affairs, S. Rep. No. 92-384, 92nd 1st Sess. (1971), at 23-24.

The Senate Committee's findings of ''linguistic and cultural exclusion and alienation'' are amply supported by the weight of expert educational opinion and, indeed, by respondents themselves.[7] Thus the evidence indicates that

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[2] Report of the Select Committee on Equal Education Opportunity, S. Rep. No. 92-000, 92nd Cong., 2nd Sess. (1972), at 277.

[3] Hearings Before the Senate Select Committee on Equal Educational Opportunity, 91st Cong., 2nd Sess., pt. 8, at 3726 (1970).

[4] *Id.* at 3685.

[5] *Id.* at Part 4, 2400.

[6] Report of the Special Subcommittee on Indian Education of the Senate Committee on Labor and Public Welfare, S. Rep. No. 501, 91st Cong., 1st Sess. (1969), at 19.

[7] [W]hen these [non-English-speaking Chinese] youngsters are placed in grade levels according to their age and are expected to compete with their English-speaking peers, they are frustrated by their inability to understand the regular classwork . . . . For [these] children, the lack of English means poor performance in school. The secondary student is almost inevitably doomed to be a dropout and become another unemployable in the ghetto. San Francisco Unified School District, *Pilot Program: Chinese Bilingual*, pages 3A-6A (May 15, 1969), Plaintiffs' Exhibit No. 5 ——, (App. ——).

verbal forms of communication in children evolve more slowly than actual understanding. The natural process is for a child first to develop understanding and then to form a concept. Then, when the child has formed the new category, he needs a name or label for it, and as he becomes older the child begins to use language at an accelerating rate for purposes of problem solving.[8] When ideas are being formed in one language, it is difficult to state them in another and ''cognitive confusion,'' confusion in the child's understanding of the concepts and reasoning tasks at hand may develop. This confusion may lead to great frustration or anxiety and ultimately to a loss of interest in expressing ideas. When a school instructs in a second language before a child has developed adequate cognitive skills in his native language, the child may become a ''non-lingual'' whose functioning in both his native and a second language develops in only limited ways.[9] Moreover, the educational harms suffered by the non-English speaking child are not limited to his verbal abilities or comprehension of orally presented subject matter. Research indicates that development of reading skills will also be impaired when there is a mismatch between the literary learner's own spoken and written language and the spoken language that the teacher regards as the proper basis for the learner's expected literate responses.[10]

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[8] See Vera P. John and Vivian M. Horner, *Early Childhood Bilingual Education* (Modern Language Association of America, 1971), 171; Joan T. Feely, ''Teaching Non-English Speaking First Graders to Read,'' *Elementary English* (1970), 207; Anne Anastasi and Fernando A. Cordova, ''Some Effects of Bilingualism Upon the Intelligence Test Performance of Puerto Rican Children in New York City,'' *The Journal of Educational Psychology*, Vol. XLIV (1953), 15, 16; Sheldon H. White, ''Some General Outlines of the Matrix of Developmental Changes Between Five and Seven Years,'' *Bulletin of the Orton Society* (1970), 20, 41-57; John MacNamara, ''Effects of Instruction in a Weaker Language,'' *The Journal of Social Issues*, Vol. XXIII (1967), 22, 132; Sheldon H. White, ''Evidence for a Hierarchical Arrangement of Learning Processes,'' in L. P. Lipsett and C. C. Spiker, eds., *Advances in Child Development and Behavior*, Vol. II (New York: Academic Press, 1965); John MacNamara, ''Cognitive Basis of Language Learning in Infants,'' *Psychological Review*, Vol. 79 (1972), 1; John A. Downing, ''Children's Thoughts and Language in Learning to Read,'' Unpublished paper, ERIC, (1971); and generally Jean Piaget, *The Language and Thought of the Child* (London: Routledge and Kegan Paul, 1959) and Leo S. Vygotsky, *Thought and Language* (Cambridge: M.I.T. Press, 1962).

These educational experts have focused on several different methods of teaching non-English speaking youngsters.[11] Yet it is significant that no support could be found in the literature for simply allowing non-English speaking youngsters to sit, uncomprehending, in the classroom without making intensive efforts to minimize their language disabilities.[12] The reference in the opinion below to a dispute among the experts [13] cannot obscure the fact that petitioners are receiving no language instruction at this point, either by English as a Second Language, by bilingual education or by any other instructional method.

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[9] See John and Horner at 165-73; Feely at 207; Anastasi and Cordova at 3; C. Allen Tucker, "The Chinese Immigrant's Language Handicap: Its Extent and Its Effects," *Florida FL Reporter*, Vol. 7 (1969) 44; Miles V. Zintz, *Education Across Cultures* (Kendall Hunt, 1969), 142-3, 262, 267, 398; Northeast Conference on the Teaching of Foreign Languages, *The Challenge of Bilingualism*, Report of Working Committee II, in G. Reginald Bishop, Jr., ed., *Foreign Language Teaching: Challenges to the Profession* (1965) 77-8; Madorah F. Smith, "Measurement of Vocabularies of Young Bilingual Children in Both of the Languages Used," *The Journal of Genetic Psychology*, Vol. 74 (1949), 305-10; Ethel M. Barke and D. E. Williams, "A Further Study of the Comparative Intelligence of Children in Certain Bilingual and Monolingual Schools in South Wales," *The British Journal of Educational Psychology*, Vol. VIII (1938), 63; Theodore Andersson, "A New Focus on the Bilingual Child," *The Modern Language Journal*, Vol. XLIX (1965), 156-60; Chester C. Christian, Jr., "The Acculturation of the Bilingual Child," *The Modern Language Journal*, Vol. XLIX (1965), 163-64; David T. Hakes, "Psychological Aspects of Bilingualism," *The Modern Language Journal*, Vol. XLIX (1965) 220-27; Mildred V. Boyer, "Poverty and the Mother Tongue," *Educational Forum*, Vol. XXIX (1965), 290-96; George Perren, "New Languages and Younger Children," *English Language Teaching*, Vol. XXVI (1972), 229-238; Doris C. Ching, "Methods for the Bilingual Child," *Elementary English*, Vol. 42 (1965) 22-27; Patricia G. Adkins, "Deficiency in Comprehension in Non-Native Speakers," *TESOL Quarterly*, Vol. 3 (1969) 197. The broad conclusion that frustration and anxiety resulting from the language problem may in turn produce academic failure is in line with the finding that fear of academic failure in fact induces failure. See Eugene Burnstein, "Fear of Failure, Achievement Motivation, and Aspiring to Prestigeful Occupations," *Journal of Abnormal Psychology and Social Psychology*, Vol. 67 (1963) 189-193; Emery L. Cowen, Melvin Zax, Robert Klein, Louis D. Izzo and Mary Ann Trost, "The Relation of Anxiety in School Children to School Record, Achievement, and Behavioral Measures," *Child Development*, Vol. 36 (1965) 685-695; N. T. Feather, "The Relationship of Expectation of Success to Reported Probability, Task Structure, and Achievement Related Motivation," *Journal of Abnormal Psychology and Social Psychology*, Vol. 66 (1963) 231-238; R. S. Lazarus, J. Deese and Sonia F. Osler, "The Effects of Psychological Stress Upon Performance," *Psychological Bulletin*, Vol. 49 (1952) 293-317.

[10] John Downing, *Comparative Reading* (MacMillan Company, 1973) 181 ff; Nancy Modiano, "National or Mother Language in Beginning Reading: A Comparative Study," *Research in the Teaching of English*, 2 (1968) 32-43.

[11] John B. Lum, "An Effectiveness Study of English as a Second Language (ESL) and Chinese Bilingual Methods," Unpublished paper, ERIC (1973).

[12] Indeed such efforts are crucial. See A. V. Overn and D. G. Stubbins "Scholastic Difficulties of the Children of Immigrants," *Journal of Educational Research*, Vol. 31 (1937) 278-280.

[13] *Lau v. Nichols*, *supra* at 917, fn. 17.

B. Memorandum, Proposal, and Critique of Plaintiffs-Intervenors, submitted on February 3, 1975, by Hispanic Intervenors in Boston School Desegregation case, *Morgan* v. *Kerrigan*, C.A. No. 72-911-G, D.Mass. (excerpt)

BILINGUAL EDUCATION IS A RESPONSE TO EDUCATIONAL DEPRIVATION

The Hispanic community in Boston has increased dramatically from the 1,200 counted in 1960[3] to an estimated 17,949 in 1972[4] and continues to grow by approximately 1,500 each year.[5] This sharp growth in the Hispanic community is reflected in the rapid rise in the number of Hispanic children attending the Boston public schools. The numbers of Spanish surnamed school children rose from 2,516 in 1968[6] to 6,143 in 1974.[7] Of the 75,413 children presently enrolled in the Boston public schools, these 6,143 Spanish surnamed students constitute 8.2%. The 4,446 Hispanic children who are categorized as receiving bilingual education programs, comprise 72.8% of the total Hispanic enrollment.[8]

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[3] A Report by the Task Force on Children Out of School, "The Way We Go to School: **The Exclusion of Children in Boston,**" **Beacon Press** (Boston), 1971.

[4] County and City Data Book, 1972, A Statistical Abstract Supplement, U.S. Dept. of Commerce, Bureau of the Census, pp. 702-3. Estimates offered by governmental and non-governmental sources other than the Bureau of Census range as high as 32,000. See "The Way We Go to School," supra at 16.

[5] "The Way We Go to School," supra.

[6] "The Way We Go to School," supra at 15.

[7] Student Desegregation Plan of December 16, 1974 submitted by the Boston School Committee, at 111-3. It should be noted that geocode printouts submitted as part of the December 16, 1974 plan indicate that the total number of Spanish surnamed students in the Boston public schools is 6,319, in the following grades: 235 in K_1 and K_2; 3,894 in grades 1-5; 1,270 in grades 6-8; and 920 in grades 9-12.

The history of past neglect of the Hispanic school aged children by the Boston public schools prior to the introduction of the bilingual education programs is well documented. Between 1965 and 1969 only four Puerto Rican students graduated from the Boston schools out of an estimated Hispanic student population of 7,000.[9] Of the estimated 2,500 Hispanic children enrolled in the Boston public schools in 1969, 250 were in the senior high schools, and fewer than 10 graduated from the Boston high schools in June 1970.[10]

Between 2,650 and 7,800 Spanish speaking school age children in Boston in 1969 were out of school. Not only were thousands of Hispanic school children never registered,[11] but thousands of others were literally driven away from the Boston public schools[12] and joined what was becoming an army of dropouts.[13] The tragic educational plight of the Hispanic dropout reflected the academic retardation suffered by those children attending school. The achievement levels of Hispanic students were two or three years behind their age level;[14] over 75% of the Hispanic children were held back academically in school; and only 13% were in their proper grade.[15] The social and economic consequences of the educational deprivation inflicted on the Hispanic community is apparent. The Hispanic community in Boston lives in the worst, most overcrowded housing, has the highest unemployment rate and the lowest income of any identifiable minority group in the city.[16]

Confronted with these unassailable facts documenting the denial of an equal educational opportunity to the Hispanic child, the Commonwealth legislature unanimously passed the Transitional Bilingual Education Act. This legislation was a necessary response to this unlawful educational deprivation. Any retreat from these initial advances or any diminution of the quality of existing programs will not only trigger violations of state and federal rights, but will retard the quest of Hispanic children for effective education and its concomitant economic and social benefits.

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8. Memorandum from the Bilingual Education Department of the Boston public schools to the Bureau of Transitional Bilingual Education of the Commonwealth of Massachusetts, dated December 12, 1974.

9. "The Way We Go to School," supra at 17.

10. Cronin, Joseph M. and Richard M. Hailer, Organizing an Urban School System Diversity: A Study of the Boston School Department, The Massachusetts Advisory Council on Education, at 151 (1970).

11. "The Way We Go to School," supra at 18.

12. Cronin, supra at 154.

13. See Testimony of Armando Martinez, founder of PUENTE Fund, Inc., United States Congress, Senate Equal Educational Opportunity. Hearings Before the Select Committee on Equal Educational Opportunity, Part 8, November 23, 24 and 25, 1970, Washington, D.C., United States Government Printing Office, pp. 3707. See also City Defendants' Plan, January 27, 1975 IV-101.

14. The Commonwealth of Massachusetts, Department of Education, Bureau of Transitional Bilingual Education, "Two Way" (A Summary of the Transitional Bilingual Education Act).

15. Vorhauer, Delia, "A Profile of Boston's Spanish Speaking Community: Characteristics and Attitudes," Association for the Promotion of the Constitutional Rights of Spanish Speaking (APCROSS) and Massachusetts State Department of Education, Migrant Division, compiled by Boston Community Development (ABCD), April, 1969.

16. Adriana Gianturco and Norman Cronin, Boston's Spanish Speaking Community: Findings of a Field Survey, (Boston, Mass.: Action for Boston Community Development, Inc., February 1973), pp. 53-67; 79-81; 101-9.

C. "An Education Plan for the Denver Public Schools," prepared by
Dr. Jose A. Cardenas, National Educational Task Force de La Raza,
San Antonio, Texas, January 21, 1974 (excerpts)

RATIONALE FOR THE PLAN

The Cardenas-Cardenas Theory of Incompatibilities

Black and Mexican American children have not enjoyed the same success in school as that of the typical middle class American. The Cardenas-Cardenas Theory of Incompatibilities (Blandina Cardenas and Jose A. Cardenas, NEA Journal, Today's Education, February, 1972.) is a tested belief that the failure of such children can be attributed to a lack of compatibility between the characteristics of minority children and the characteristics of typical instructional programs.

An instructional program developed for a white, Anglo Saxon, English-speaking, middle class school population cannot be and is not adequate for a non-white, non-Anglo-Saxon, non-English-speaking, or non-middle class population.

To reverse the pattern of failure for non-typical children, it is necessary that the instructional program and the characteristics of the learner be compatible.

In order to develop such an instructional program, it is necessary that incompatibilities be identified and eliminated.

In a preliminary study made with the assistance of Dr. Egon Guba and John Horvat from Indiana University and Dr. Daniel Stufflebeam from Ohio State University, we were able to identify over 40 such incompatibilities. Subsequently, these incompatibilities were grouped into five areas to be presented here: poverty, culture, language, mobility, and societal perceptions.

Poverty

Many of this country's minority children are raised in a poverty situation. Much has been written about the effects on poverty on the development of the individual. In general, it can be concluded that the growth of a child in a poverty situation leads to a non-typical developmental pattern which differs from developmental patterns of middle class children.

Large child-to-adult ratios lead to the development of atypical speech patterns when the amount of interaction between children and adults is constrained. The frequent absence of one of the typical adults in the home, and the dissipation of adult energies in meeting the basic essentials of life further compound this problem.

The relative absence of communication media in terms of TV sets, radios, newspapers, magazines, and books contribute to the development of an atypical developmental pattern.

An absence of success models and an academic oriented tradition develop differing concepts toward schools and schooling.

Poverty also leads to a relative unavailability in intellectually stimulating toys, games and activities.

The deprivational effects of inadequate housing, malnutrition and poor health similarly influences the development of poor children.

Evidence of this type has led educators to an erroneous conclusion, namely the development of a deficit philosophy which attributes the poor school performance of poverty children on a deficiency brought about by growing up in a deficient environment. Though there frequently exists an educational developmental retardation, it is our opinion that this retardation is not a serious educational handicap. The retardation can be overcome by the placement of the child in a school environement which can stimulate development and rapidly produce an accelerated development in those areas critical to educational success in typical school situations.

The educational handicap of poverty children comes about when they are placed in an educational program which fails to take into account the unique early developmental

patterns and assumes and requires the same developmental level which is normally found in middle class children.

For example, it has been extensively documented that children growing up in the noisy environment of an overcrowded ghetto home located in an unpreferred residential area develop listening skills in a different manner from children raised in the relative quiet and order of a middle class home. Poverty children raised in poverty situations tend to learn to block out sounds rather than to learn finer and finer sound discriminations as is the case with middle class children.

Upon entering school, it is possible to place a poverty child in an auditory-discrimination program in which in a matter of weeks the auditory developmental retardation may be successfully overcome.

If instead of being placed in such a program, he is usually placed in a typical reading readiness program which assumes that the child has the audio-discrimination development of the middle class children for whom the program was developed, the results will be disastrous.

Therefore, the failure of the child in this case is not due to the type of home in which he was raised, but rather the type of school program in which he was placed. Audio-discrimination retardation is not an educational problem. The incompatibility between the existing level of development and the level of development assumed in the instructional program and needed for success is the educational problem.

(For further substantiation of these findings, refer to the evaluation of the Edgewood Independent School District's Early Childhood Education Program at the Dr. Jose Angel Cardenas School, San Antonio, Texas, conducted by the Southwest Educational Development Laboratory, Austin, Texas.)

Culture

A second incompatibility between the characteristics of minority children and instructional programs is in the area of culture.

The incompatibilities between minority children and most school systems can be summarized in three generalizations:

1. Most school personnel know nothing about the cultural characteristics of the minority school population;

2. The few school personnel who are aware of these cultural characteristics seldom do anything about it, and

3. On those rare occasions when the school does attempt to do something concerning the culture of minority groups, it always does the wrong thing.

Much has been written about the cultural irrelevance of instructional materials. In general, typical instructional materials developed by and for white, Anglo, middle class personnel present surroundings, situations, dialogue, and conclusions which are foreign and incongruous to the culturally atypical child. The absence of minority traditions, values and orientations in instructional materials makes them irrelevant and meaningless, and of inferior educational value for utilization by minority children.

School responses to this incompatibility have been dysfunctional. The use of black or brown ink to color the physical features of some of the people portrayed in some textbooks has done little to reduce the incompatibility.

The inclusion of negative stereotypes has frequently aggravated this problem rather than diminishing it.

Though incompatibilities in instructional materials have received much attention in recent years, no such attention has been drawn to the incompatibilities in instructional methodologies.

Professor Lessor at Harvard conducted some interesting experiments which gives us some insights into the nature of this problem. In studying learning characteristics of children from different ethnic backgrounds, he discovered that children from different ethnic groups display some marked preference for ethnically compatible learning styles. For example, Jewish children did better than Chinese children in instructional activities based on verbalization. On the contrary, Chinese children outperformed Jewish children in instructional activities presented in the abstract. Regardless of socioeconomic background, the amount of learning correlated with the ethnicity and preferred learning style.

In a similar experiment at UCLA, Kagan and Madsen conducted learning activities with Mexican National, Mexican American, and Anglo children. In a learning activity based on typical middle class Anglo competition, the Anglo children out-performed the Mexican American children, who in turn out-performed the Mexican children.

Upon presenting the same learning activity, but basing it on cooperation rather than competition, the Mexican children out-performed the Mexican American children, and both groups out-performed the Anglo children.

The conclusion of these and other similar studies indicate that the amount children learn in a classroom is dependent on their race or ethnicity, the related cultural characteristics, their culturally related preferred learning styles and the style used by the school.

Obviously, if learning styles compatible with Anglo children are utilized exclusively, the instructional program is biased and incompatible for minority children.

Dr. Manuel Ramirez and Dr. Alfredo Castaneda at Stanford University have developed an instructional approach based on a "Culturally Democratic Learning Environment" which allows children options in selecting learning activities compatible with their culturally dependent learning styles.

In distinguishing between these first two areas of incompatibility, the school is warned that it is responsible for differentiating between the "culture of poverty" and "cultural poverty". Responsiveness to the characteristics of poverty is a prerequisite to providing equal access to the full benefits of the educational program to minority-group children. It is incumbent upon the school district to remove the constraints which poverty places on the educational success of children and to compensate for deprivations that are correlated with poverty.

There is a fine distinction, however, between the effects of poverty and the effects of culture. While it is the school district's responsibility to eradicate the effect of poverty, it is not the school's prerogative to reverse the effects of culture. Mexican American and Black children are culturally different children who are deprived because they are poor; cultural difference becomes cultural deprivation only after culturally biased institutions succeed in damaging the fabric of culture through consistent attack.

Language

Language is an element of culture so significant in its role as an impediment to learning that it must be listed as a separate incompatibility.

It is apparent that an incompatibility exists when a Spanish-speaking child is placed in an English-language instructional program. The incompatibility is not so apparent when the language differences are attributed to dialect (as in some Black children) or socioeconomic background. The language utilized in most textbooks in the early grades is so incompatible with the language of minority and disadvantaged children that it frequently appears to the child to be a foreign language.

I make no value judgement as to the relative worth or adequacy of the various languages and dialects which can be utilized in our country. The important point, as in the two preceeding areas of incompatibility, is that a child cannot be taught successfully in a language system which he does not understand.

Past attempts to eliminate this incompatibility have been detrimental to the minority child. Psychologically, the trauma produced by the sudden immersion into an incomprehensible situation coupled with the identification of the native language as undesirable, detrimental and inadequate still remains with many of us.

Pedagogically, the cold turkey approach into the acquisition of a new language commonly requires that the beginning child master a new language, plus basic skills in that new language such as reading and arithmetic, and a variety of content materials -- all at the same time. The common failure of the child to achieve all three marks the beginning of the cummulative deficit phenomenon.

The introduction of English as a Second Language (ESL) programs may have improved the situation but in itself failed to solve the problem. The postponement of basic skill development and content acquisition until a new language system has been mastered led to the delay for periods of as long as one year with a resultant academic retardation and overagedness. ESL with an inevitable non-acceptance and subsequent elimination of the Spanish language gave the child a sense of language valuing which indicated to him the inferiority of his native tongue.

The only sensible solution to come about for the elimination of this incompatibility has been the development of bilingual education programs in recent years.

Typically, bilingual programs consist of three basic elements presented simultaneously:

1. The continued cognitive development of the child, with accompanying development of basic skills and content acquisition in his dominant language;

2. The development of English as a second language, and

3. The further extension of his native language system.

Mobility

To a large extent, the instructional program for typical children is one designed for a geographically stable population. Such a program is incompatible for a highly mobile child. Though this characteristic was originally identified in the children of migrant agricultural laborers, it was soon apparent that urban minority children are no less mobile. The advent of urban development with accompanying urban renewal and government subsidized housing, coupled with common financial and social problems led to the mobility of minority and disdvantaged children.

The typical instructional program has build-in continuity and sequence which assumes that the child in the classroom today was here yesterday and will be here tomorrow is incompatible with the mobility characteristic. The program discontinuity problem must be faced with either a mobile curriculum or with a highly individualized instructional program.

Societal Perceptions

The last area of incompatibility presented here is between the instructional program and the way the minority child is perceived.

Minority children tend to perceive themselves in negative terms. If the child does not have negative perceptions upon entering school, the alien environment with its continuous negative valuing of the child, his home, his language and culture will rapidly develop this negative self-concept.

Typical instructional programs are developed for dominant culture children who have positive, often very positive, concepts of self. The instructional materials and methodologies do not have the frequent, strong, and immediate positive feedback mechanism needed in order for the child to change his concept and perceive himself as a successful learner in a learning situation.

On the contrary, the erroneous assumption of the existence of prerequisite skills, the large increments of difficulty, and the inadequacies of the program tend to develop or strengthen a negative concept.

Yet, just as nothing succeeds like success, nothing is as educationally motivating to a child as experiencing success in a learning situation.

A similar situation exists in regard to the perceptions which the school has of the minority child. In general, the negative feelings which schools hold and express to minority children lead to the development of very low levels of expectancy for the performance of these children, and all children tend to perform in keeping with what is expected of them.

Just as Jacobson and Rosenthal were able to improve children's school performance and subsequently even intellectual abilities by giving teachers false information about the innate potential of children in their classic experiment, Pygmalion in the Classroom, so too can teachers downgrade the performance of minority children by low levels of expectancy based on equally false information.

Summary

In general, the Cardenas-Cardenas Theory of Incompatibilities attributes the poor school performance of minority and disadvantaged children on the differences between the characteristics of the children and the characteristics of typical instructional programs developed for typical children.

No deliberate attempt is made to critize typical instructional programs when utilized with the children for whom the programs were developed. On the other hand, no criticism is made of the characteristics of minority children. The situation is analagous to a square peg and a round hole. The incompatibility between the two shapes do not allow them to get together.

Interrelatedness and Interdependence

Two additional principles are necessary for understanding the educational implications of the Theory of Incompatibilities. The first is the principle of interrelatedness and interdependence.

Up to this point, the various areas of incompatibility have been presented individually. It is dangerous to assume that each of these areas is an independent variable which can be studied, analyzed, and responded to, independent of the other four areas. The five areas are so interrelated that it is impossible as well as fruitless to consider one in the absence of the others.

For instance, it has been stated that mobility is an area of incompatibility which accounts for the poor academic performance of minority and disadvantaged children. Yet, we can cite many examples of other types of "mobile" children such as the children of military personnel, chain store executives, and certain civil service workers who experience a similar degree of mobility and still do not

suffer from the effects of program discontinuity. In fact, many of these children, in spite of, or because of, their mobility, tend to out-perform children from geographically stable homes.

Therefore, mobility can be an asset or a liability. It is only when mobility is coupled with poverty, culture, language, or societal perceptions that it becomes a liability for the minority child. Perhaps it is the combination of some, or perhaps all, the other areas of incompatibility with mobility that produces the disastrous educational effects characteristic of mobile minority children.

Another example is the incompatibility of language which is frequently described as the cause of all of the educational problems of Mexican Americans. Yet, educators who have taught along the Mexican border where there is a large influx of new immigrants are well acquainted with a phenomenon characteristic to these children.

Though immigrant children who have previously attended school in the mother country may enter our schools without any knowledge of the English language, after a brief period of instability as they acquire English language skills, they will consistently out-perform native-born minority children.

Therefore, the incompatibility of language, even coupled with culture, is not the sole source of the problem. It is language, and culture, and poverty, and mobility, and perceptions in tandem which account for the poor performance of minority children.

This principle has two major implications for our purposes. First, the development of education programs which respond to one of the incompatibilities and ignores the others is doomed to failure. This principle accounts for the past failure of our school systems to develop successful programs for minority children.

In most cases, billions of federal dollars have been poured into programs aimed at responding to some characteristicss of the minority child in the absence of the others and have failed to make a significant change in the performance of the children.

The second implication is that the development of an education plan which responds to the needs of minority children must be a comprehensive plan which takes into account all the areas of incompatibility rather than a piecemeal effort.

A bilingual program, a Black studies program, a poverty program developed in the absence of a comprehensive attack will not bring about improved performance of minority children.

Adaptability

A second principle which must be considered prior to the development of an educational plan is the principle of adaptability.

It was previously stated that an incompatibility exists between the characteristics of the minority child and the characteristics of the instructional program. One of two options exists. Either the child must be changed to fit the instructional program or the instructional program must be changed to fit the child.

Past attempts on the part of school systems to develop functionally responsive instructional programs indicate an eclectic philosophy. When the atypicalness was a characteristic falling within the area of the dominant cultural group, the school has modified its program to fit the child. Thus, we commonly see elevators for handicapped children, Braille materials for the blind, and elaborate schemes, materials and equipment to fill the needs of a limitless assortment of atypical children.

But when the atypical characteristic has been attributed to race or ethnicity, the school has placed the burden of adaptability on the child. Thus, schools have acted in a racist manner in the application of this double standard for adaptability.

In addition to the inherent racism in the concept of having minority children adapt to a typical program such an approach can no longer be tolerated for the following reasons:

1. It has been a failure. There is no way to change a non-white into a white or to change a Mexican American boy or girl into a child of northern European descent. Mass efforts in welfare legislation have barely made a dent in the incidence and extent of poverty. Past legislation in various states prohibiting the use of any language other than English for instructional activities in schools did little to reduce, let alone eliminate, the speaking of Spanish among Mexican Americans.

2. The melting pot myth is rapidly being replaced by concepts of cultural pluralism. Before attempts to change the characteristics of the learner are implemented, it is necessary to raise the question: Is it desirable to do so?

3. Changing the individual in order to produce compatibility between the instructional program and the learner is futile unless the changed individual is also accepted into the larger society. Social, political, military, and economic discrimination against Black and Mexican Americans in this country will continue to constrain any ethnic disposition to change for the sole purpose of participating in the educational program.

4. The process of change is destructive when it calls on Blacks and Mexican Americans to reject themselves in order to assume a new identity.

II. Decisions

Lau v. Nichols, 414 U.S. 563 (1974), is the leading case in this area. It is set out in full. The other decisions, included in the order in which they were filed, are as follows:

- excerpts from United States v. Texas (San Felipe-Del Rio), 342 F.Supp. 24 (E.D. Tex., 1971), in which a comprehensive bilingual-bicultural plan was ordered into effect, aff'd per curiam, 466 F.2d 518 (C.A. 5, 1972);
- summary of Aspira v. Board of Education of the City of New York, 58 F.R.D. 62 (S.D.N.Y., 1973) (denying motion to dismiss);
- entire opinion in Serna v. Portales Municipal Schools, 499 F.2d 1147 (1974). Note particularly in Serna the court's treatment of the question of district court discretion in specifying the kinds of programs which are required;
- summary of United States v. Board of Education of Waterbury, C.A. No. 13, 465, D.Conn., May 6, 1975 (intervention in desegregation case allowed in remedy phase);
- summary of Aspira of New York v. Board of Education of the City of New York, 394 F.Supp. 1161 (S.D.N.Y., 1975) (identifying class of Hispanic students entitled to bilingual education under consent decree);
- excerpts from Morgan v. Kerrigan, C.A. No. 72-911-G. D.Mass., June 5, 1975 (opinion on remedy dealing with bilingual education);
- summary of Evans v. Buchanan, C.A. Nos. 1816-1822, D.Del., June 26, 1975 (allowing participation as amicus curiae in remedy phase of school desegregation case);
- excerpts from Morales v. Shannon, 516 F.2d 411 (C.A. 5, 1975), remanding for further consideration on the issue of bilingual-bicultural education; see 366 F.Supp. 813 (W.D.Tex., 1973);

- excerpts from *Keyes* v. *School District Number 1, Denver*, 380 F.Supp. 673 (D.Colo., 1974), requiring implementation of a detailed bilingual-bicultural plan, and the Tenth Circuit's reversal in 521 F.2d 465 (C.A. 10, 1975);

- excerpts from *Bradley* v. *Milliken*, C.A. No. 35, 257, E.D.Mich., August 16, 1975 (opinion and order in remedy phase dealing with bilingual education).

As noted in the Introduction, a central question is whether a court may order a meaningful bilingual-bicultural program as a remedy. How far will district courts go and how far will appellate courts allow them to go in deciding what may seem to some to be matters of educational policy? The decided cases indicate that some important factors will be whether a system defaults in its primary obligation to submit a remedial plan (*Serna*), whether there is a state law which a court can order implemented (*Morgan*, *Bradley*), and whether a court goes far toward restructuring the school system (*Keyes*--reversing district court order). A future issue is to what extent courts will enter strong relief in reliance on the Summer, 1975 HEW memorandum. See Introduction, p. 2.

A. Decision in *Lau* v. *Nichols,* 414 U.S. 563 (1974)

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 72–6520

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners,
v.
Alan H. Nichols et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January 21, 1974]

Mr. Justice Douglas delivered the opinion of the Court.

The San Francisco California school system was integrated in 1971 as a result of a federal court decree, 339 F. Supp. 1315. See *Lee* v. *Johnson,* 404 U. S. 1215. The District Court found that there are 2,856 students of Chinese ancestry in the school system who do not speak English. Of those who have that language deficiency, about 1,000 are given supplemental courses in the English language.[1] About 1,800 however do not receive that instruction.

This class suit brought by non-English speaking Chinese students against officials responsible for the operation of the San Francisco Unified School District seeks relief against the unequal educational opportunities which are alleged to violate the Fourteenth Amendment. No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioner asks only that the Board of Education be directed to apply its expertise to the problem and rectify the situation.

The District Court denied relief. The Court of Appeals affirmed, holding that there was no violation of the Equal Protection Clause of the Fourteenth Amendment nor of § 601 of the Civil Rights Act of 1964, which excludes from participation in federal financial assistance, recipients of aid which discriminate against racial groups, 483 F. 2d 791. One judge dissented. A hearing *en banc* was denied, two judges dissenting. *Id.*, at 805.

We granted the petition for certiorari because of the public importance of the question presented, 412 U. S. 938.

The Court of Appeals reasoned that "every student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and continued *completely apart from any contribution* by the school system," 483 F. 2d, at 497. Yet in our view the case may not be so easily decided. This is a public school system of California and § 571 of the California Education Code states that "English shall be the basic language of instruction in all schools." That section permits a school district to determine "when and under what circumstances instruction may be given bilingually." That section also states as "the policy of the state" to insure "the mastery of English by all pupils in the schools." And bilingual instruction is authorized "to the extent that it does not interfere with the systematic, sequential, and regular instruction of all pupils in the English language."

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[1] A reported adopted by the Human Rights Commission of San Francisco and submitted to the Court by respondent after oral argument shows that, as of April 1973, there were 3,457 Chinese students in the school system who spoke little or no English. The document further showed 2,136 students enrolled in Chinese special instruction classes, but at least 429 of the enrollees were not Chinese but were included for ethnic balance. Thus, as of April 1973, no more than 1,707 of the 3,457 Chinese students needing special English instruction were receiving it.

Moreover § 8573 of the Education Code provides that no pupil shall receive a diploma of graduation from grade 12 who has not met the standards of proficiency in "English," as well as other prescribed subjects. Moreover by § 12101 of the Education Code children between the ages of six and 16 years are (with exceptions not material here) "subject to compulsory full-time education."

Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, text books, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

We do not reach the Equal Protection Clause argument which has been advanced but rely solely on § 601 of the Civil Rights Act of 1964, 42 U. S. C. § 2000 (d) to reverse the Court of Appeals.

That section bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving federal financial assistance." The school district involved in this litigation receives large amounts of federal financial assistance. HEW, which has authority to promulgate regulations prohibiting discrimination in federally assisted school systems, 42 U. S. C. § 2000 (d), in 1968 issued one guideline that "school systems are responsible for assuring that students of a particular race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system." 33 CFR § 4955. In 1970 HEW made the guidelines more specific, requiring school districts that were federally funded "to rectify the language deficiency in order to open" the instruction to students who had "linguistic deficiencies," 35 Fed. Reg. 11595.

By § 602 of the Act HEW is authorized to issue rules, regulations, and orders[2] to make sure that recipients of federal aid under its jurisdiction conduct any federal financed projects consistently with § 601. HEW's regulations specify, 45 CFR § 80.3 (b)(1), that the recipients may not:

> "Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
>
> * * * * *
>
> "Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program";

Discrimination among students on account of race or national origin that is prohibited includes "discrimination in the availability or use of any academic . . . or other facilities of the grantee or other recipient." *Id.*, 80.5 (b).

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[2] Section 602 provides:

"Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. . . ."

Discrimination is barred which has that *effect* even though no purposeful design is present: a recipient "may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination" or has "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin." *Id.*, 80.3 (b(2).

It seems obvious that the Chinese-speaking minority receives less benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the Regulations.[3] In 1970 HEW issued clarifying guidelines (35 Fed. Reg. 11595) which include the following:

"Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." (Pet. Br. App. 1a).

"Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track." (Pet. Br. p. 2a).

Respondent school district contractually agreed to "comply with title VI of the Civil Rights Act of 1964 . . .

and all requirements imposed by or pursuant to the Regulations" of HEW (45 CFR Pt. 80) which are "issued pursuant to that title . . ." and also immediately to "take any measures necessary to effectuate this agreement." The Federal Government has power to fix the terms on which its money allotments to the States shall be disbursed. *Oklahoma* v. *Civil Service Commission*, 330 U. S. 127, 142–143. Whatever may be the limits of that power, *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 590 *et seq.*, they have not been reached here. Senator Humphrey, during the floor debates on the Civil Rights Act of 1964, said:[4]

"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination."

We accordingly reverse the judgment of the Court of Appeals and remand the case for the fashioning of appropriate relief.

Reversed.

MR. JUSTICE WHITE concurs in the result.

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[3] And see Report of the Human Rights Commission of San Francisco, Bilingual Education in the San Francisco Public Schools, Aug. 9, 1973.

[4] 110 Cong. Rec. 6543 (Senator Humphrey quoting from President Kennedy's message to Congress, June 19, 1963.)

SUPREME COURT OF THE UNITED STATES

No. 72-6520

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[January 21, 1974]

Mr. Justice Stewart, with whom The Chief Justice and Mr. Justice Blackmun join, concurring in the result.

It is uncontested that more than 2,800 school children of Chinese ancestry attend school in the San Francisco Unified School District system even though they do not speak, understand, read, or write the English language, and that as to some 1,800 of these pupils the respondent school authorities have taken no significant steps to deal with this language deficiency. The petitioners do not contend, however, that the respondents have affirmatively or intentionally contributed to this inadequacy, but only that they have failed to act in the face of changing social and linguistic patterns. Because of this laissez faire attitude on the part of the school administrators, it is not entirely clear that § 601 of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, standing alone, would render illegal the expenditure of federal funds on these schools. For that section provides that "[n]o person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under

any program or activity receiving Federal financial assistance."

On the other hand, the interpretive guidelines published by the Office for Civil Rights of the Department of Health, Education, and Welfare in 1970, 35 Fed. Reg. 11595, clearly indicate that affirmative efforts to give special training for non-English speaking pupils are required by Tit. VI as a condition to receipt of federal aid to public schools:

> "Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." [1]

The critical question is, therefore, whether the regulations and guidelines promulgated by HEW go beyond the authority of § 601.[2] Last Term, in *Mourning* v. *Family Publications Service, Inc.*, 411 U. S. 356, 369, we held that the validity of a regulation promulgated under a general authorization provision such as § 602 of Tit. VI[3] "will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.' *Thorpe* v. *Housing Authority of the City of Durham*, 393 U. S. 268, 280–281 (1969)." I think the guidelines here fairly meet that test. Moreover, in assessing the purposes of remedial legislation we have found that departmental regulations and "consistent administrative construction" are "entitled to great weight." *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U. S. 205, 210; *Griggs* v. *Duke Power Co.*, 401 U. S. 424, 433–434; *Udall* v. *Tallman*, 380 U. S. 1. The Department has reasonably and consistenly interpreted § 601 to require affirmative remedial efforts to give special attention to linguistically deprived children.

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[1] These guidelines were issued in further clarification of the Department's position as stated in its regulations issued to implement Tit. VI, 45 CFR pt. 80. The regulations provide in part that no recipient of federal financial assistance administered by HEW may

> "Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; [or]
>
> "Restrict an individual in any way in the enjoyment of an advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program."

45 CFR § 80.3 (b) (1) (ii), (iv).

[2] The respondents do not contest the standing of the petitioners to sue as beneficiaries of the federal funding contract between the Department of Health, Education, and Welfare and the San Francisco Unified School District.

For these reasons I concur in the judgment of the Court.

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[3] Section 602, 42 U. S. C. § 2000d–1, provides in pertinent part:

'Each Federal department and agency which is empowered to extend Federal assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorising the financial assistance in connection with which the action is taken . . . ."

The United States as *amicus curiae* asserts in its brief, and the respondents appear to concede, that the guidelines were issued pursuant to § 602.

SUPREME COURT OF THE UNITED STATES

No. 72–6520

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, *v.* Alan H. Nichols et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January 21, 1974]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE joins, concurring in the result.

I join MR. JUSTICE STEWART's opinion and thus I, too, concur in the result. Against the possibility that the Court's judgment may be interpreted too broadly, I stress the fact that the children with whom we are concerned here number about 1800. This is a very substantial group that is being deprived of any meaningful schooling because they cannot understand the language of the classroom. We may only guess as to why they have had no exposure to English in their preschool years. Earlier generations of American ethnic groups have overcome the language barrier by earnest parental endeavor or by the hard fact of being pushed out of the family or community nest and into the realities of broader experience.

I merely wish to make plain that when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision, or the separate concurrence, as conclusive upon the issue whether the statute and the guideline require the funded school district to provide special instruction. For me, numbers are at the heart of this case and my concurrence is to be understood accordingly.

B. Decision in *United States* v. *Texas*, 342 F. Supp. 24, 27-38 (E.D. Tex., 1971), *aff'd per curiam*, 466 F. 2d 518 (C.A. 5, 1972) (excerpts)*

* * *

Having determined that the Mexican-American students in the San Felipe Del Rio area may be and, indeed, for current educational purposes, must be considered as members of a cognizable ethnic or national origin group, the relief in this case becomes fundamentally similar to that which has been framed in school desegregation suits before this Court based on discriminatory treatment of black students. The mandate, as directed by the Supreme Court, is to "eliminate discrimination root and branch," Green v. New Kent County Board of Education, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), and to create a unitary school system "with no black [Mexican] schools and no white schools but just schools."

Just what is a unitary school system? The Supreme Court has offered as yet little explanation beyond saying that in such a system, no child will be effectively denied equal educational opportunities, Alexander v. Holmes County Board of Education, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19 (1969), and that the system shall exhibit the greatest amount of actual desegregation possible. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971).

Although these phrases are general and were made in the context of black/white desegregation, this Court finds them to be useful guidelines in this case. Under the circumstances here, as elucidated by Dr. Thomas and Dr. Cardenas, both experts in the problems of Mexican-American students in traditionally Anglo-American school environments, little could be more clear to the Court than the need in the newly consolidated school district created as a result of this Court's earlier order for special educational consideration to be given to the Mexican-American students in assisting them in adjusting to those parts of their new school environment which present a cultural and linguistic shock. Equally clear, however, is the need to avoid the creation of a stigma of inferiority akin to the "badges and indicia of slavery" spoken of in United States v. Jefferson County Board of Education, 372 F.2d 836 (5 Cir., 1966), cert. denied sub nom, United States v. Caddo Parish Board of Education, 389 U.S. 840, 88 S.Ct. 67, 19 L.Ed.2d 103 (1967). To avoid this result the Anglo-American students too must be called upon to adjust to their Mexican-American classmates, and to learn to understand and appreciate their different linguistic and cultural attributes. The process by which all students participate in a joint learning and adjustment process will not only constitute an educational enrichment but, also, will bring the school system as a whole closer to that goal or state-of-being referred to by the Supreme Court as a "unitary system." It is with this goal in mind, therefore—that of true integration as opposed to mere desegregation or, as Texas news media are wont to term it, "racial mixing" --that the Court issued its major order in the case of the San Felipe Del Rio Consolidated Independent School District.

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*In the portion of the opinion not included here, the court held "that, based on case law to date and on the official state and federal documents available and already noted and on the record in the matter at bar, Mexican-Americans or Spanish surnamed Americans are a separate and distinct national origin group under the terms of Title VI of the Civil Rights Act of 1964 and within the meaning of the Fourteenth Amendment." 342 F.Supp. at 26.

A COMPREHENSIVE EDUCATIONAL PLAN FOR THE SAN FELIPE DEL RIO CONSOLIDATED INDEPENDENT SCHOOL DISTRICT

I. On August 13, 1971, this Court entered an order pursuant to United States v. Texas, 321 F.Supp. 1043 (E.D. Tex. 1971), requiring the development and submission to the Court of a comprehensive educational plan containing sufficient educational safeguards to insure that all students in the San Felipe Del Rio Consolidated Independent School District will be offered equal educational opportunities. By order of the Court, these "safeguards" were to "include but . . . not necessarily be limited to bilingual and bicultural programs, faculty recruitment and training and curriculum design and content."

Subsequently, the School Board of San Felipe Del Rio Consolidated Independent School District appealed to the Court of Appeals for the Fifth Circuit, complaining particularly of that portion of this court's order relating to bilingual and bicultural educational programs, and also contesting the venue of this civil action. A motion for stay of this court's order was denied by this court and by the Court of Appeals. Thereafter, the appellant school board and the Department of Justice informed the Court of Appeals that the matter in controversy had been "settled", and that such partied had agreed upon a new comprehensive plan. Such parties jointly moved the court to remand this civil action to the trial court, with directions that the trial court adopt the plan agreed upon by the School Board and the Department of Justice. On November 3, 1971, the Court of Appeals remanded this cause to this court "for further proceedings".

At the hearing before this court on November 26, 1971, it was revealed that none of the members of the school board of the former San Felipe Independent School District had been notified of or had participated in the negotiations between the school board of the newly consolidated district and the Department of Justice, although four members of the former San Felipe Board were made members of the interim board of the newly consolidated school district by order of this court previously entered. Likewise, none of the attorneys representing the Amici Curiae were notified of or participated in these negotiations. The evidence adduced at the most recent hearing in this court also revealed that efforts to obtain federal funds to implement the Comprehensive Educational Plan, provided for in this court's order of August 13, 1971, have been extremely tentative, desultory and ineffective.

Considering the acknowledged sophistication in this field of litigation of the appellant school board's present attorneys, considering the professional qualifications and expertise of the school administration, particularly the superintendent, and also considering the undisguised hostility of the members of the interim board who were members of the board of the former Del Rio Independent School District to this court's plan relating to bilingual and bicultural educational program, the court is of the opinion that the school district has made no sincere or good faith effort to obtain federal funding of the Comprehensive Educational Plan ordered by this court.

Also, it should be noted that, although this court was led to believe that practically unlimited federal resources for the implementation of this plan were available in the form of discretionary funds available to the Secretary of Health, Education and Welfare, and that the Secretary vigorously supported such a plan, only a modicum of the funds required has been advanced by the Department of Health, Education and Welfare to this date. In this connection, it is further noted that the Department of Justice has apparently made no effort whatever to assist the school district in the obtaining of such funds, although this court adopted the plan urged by the Department of Justice.

It is obvious that the plan adopted by this court can not be implemented unless a sincere and good faith effort is made jointly by the school board and the Department of Justice to obtain such funds and unless the Secretary of Health, Education and Welfare sees fit to grant them. This court feels very strongly that the Department of Health, Education and Welfare and the Department of Justice should not urge the adoption of a plan upon this court, giving assurance of practically unlimited funds to implement it, and then, through neglect, inaction or misdirection, effectively frustrate its implementation.

Giving consideration to the evidence adduced at the hearing on November 26, 1971, the Court has adopted the following Comprehensive Educational Plan for the San Felipe Del Rio Consolidated Independent School Distirct, which contains the following elements:

a. Professional Staff Treatment and Assignment
b. Curriculum Design and Content and Instructional Methodology
c. Student Assignment and Classroom Organization
d. Staff Development
e. Parent and Community Involvement
f. Special Education
g. Non-Instructional Support
h. Funding and Timing
i. Evaluation of Comprehensive Plan

This plan is ordered to be effectuated in the belief that it can be implemented by the District, if adequately supported by Federal grants.

II. PROFESSIONAL STAFF TREATMENT AND ASSIGNMENT

The consolidated school district shall adhere to the following basic principles in the treatment and assignment of staff:

(a) All valid contracts currently existing between the former San Felipe Independent School District and professional staff employed by that district, and between the former Del Rio Independent School District and professional staff of that district, be honored in their entirety by the consolidated district.

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(b) All professional staff of both the former San Felipe Independent School District and the Del Rio Independent School District who had been granted tenure prior to consolidation are to be considered as tenured in the new consolidated district.

(c) Any demotions in position, salary, or responsibility of any members of the professional staff of the new consolidated district shall occur in accordance with the orders of the Court in this case.

(d) Principals of schools in the two previously existing districts will serve in the same administrative positions in the new consolidated district: however, assignment to specific schools should be made in a manner which insures geographic dispersal, so that members of one ethnic group will not be concentrated in any geographic area.

(e) The District will undertake vigorous recruitment and staff development effort toward a long-range goal that the ethnic composition of the administrative staff approximate the ethnic composition of the school district community.

(f) The administrative staff, faculty and other staff who work directly with children in the new consolidated district should be assigned so that the ethnic ratio of teachers and staff who work with children in each school is substantially the same as the ethnic ratio of teachers and staff who work with the children in the district as a whole.

III. CURRICULUM DESIGN AND CONTENT AND INSTRUCTIONAL METHODOLOGY

In order to ensure safeguards against the educational exclusion of any educationally or economically deprived child enrolled in the San Felipe Del Rio Consolidated Independent School District, it is necessary that this comprehensive plan for the new consolidated district recognize the responsibility of the educational agency to provide an individualized instructional program which is compatible with their cultural and learning characteristics. The following plan for curriculum design provides for such safeguards, while recognizing the cultural and linguistic pluralism of the student body and providing equal opportunity for reinforcement and expansion of that pluralism to provide for the characteristics of the larger environment in which he shall function in the future. The plan is based on three principles:

- that the cultural and linguistic pluralism of the San Felipe Del Rio Consolidated Independent School District student body necessitates the utilization of instructional approaches (in addition to those now used) which reflect the learning styles, background and behavior of all segments of the student community: modification of curriculum design, and the development of new instructional skills and materials are part of the development of pluralistic instructional approaches.
- that the educational program of the district should incorporate, affirmatively recognize and value the cultural environment and language background of all of its children so that the development of positive self-concepts in all children of the district can proceed apace, toward both the immediate and ultimate goals of those children functioning effectively in a pluralistic society.

that language programs be implemented that introduce and develop language skills in a secondary language (English for many Mexican-American students, Spanish for Anglo students), while at the same time, reinforcing and developing language skills in the primary language, so that neither English nor Spanish is presented as a more valued language, even though it will be called to the attention of the students that English is the basic language of the United States.

A. Early Childhood Education Program

The San Felipe Del Rio Consolidated Independent School District will implement an early childhood program for 3, 4 and 5 year old economically disadvantaged children which will focus on the development of basic cognitive skills as well as the development of bilingual (Spanish and English) capabilities in children. Such a program will be implemented as soon as practicable.

All children will be included in the future development of the program. Implementation of the program shall be programmed for rapid, yet educationally sound, development. Some of the initial activities to be conducted include: staff selection and development; formulation of a design for parental involvement; establishment of program objectives and meeting non-instructional needs. Previously developed early childhood education programs will be examined to aid in the development of a program designed to meet the needs of the San Felipe Del Rio Consolidated Independent School District children. The program will reflect compatibility with the child's cultural and linguistic characteristics. Such a program shall:

(a) provide instruction in the language system of the child as one or more additional language systems are developed;

(b) provide for teaching methodology compatible with the child's learning style, including his: (1) preferred mode of communication, (2) preferred mode of relating, and (3) motivational style;

(c) provide for the systematic development of basic cognitive, affective, psychomotor skills, including: (1) problem solving, (2) auditory discrimination, (3) sensory-motor, (4) language development, and (5) perceptual;

(d) provide for a process-oriented curriculum;

(e) provide for the development of self-direction and choice making skills;

(f) provide for the reinforcement of the child's cultural heritage and ethnic identity and for an understanding and appreciation of that of others;

(g) provide for small group and individualized instruction;

(h) provide for the utilization of community personnel reflective of the student population in terms of ethnicity, economic status, and area of residence in para-professional roles;

(i) provide for meeting the non-instructional needs of the children including health, nutritional, and family services assistance;

(j) provide for comprehensive parental involvement at both the planning, implementation and evaluation level of the program as well as at the instructional level as parent volunteers fully engaged in the learning-teaching process.

B. Grades K-4

The San Felipe Del Rio Consolidated Independent School District shall implement a K-4 program that presents to all children a bilingual-bicultural instructional program which utilizes the child's language system (English, Spanish, or a blend of both) as the medium of instruction as proficiency in one or more additional language systems is developed. This shall be accomplished by the implementation of at least the following:

- grouping of instructional units to include not more than 60 students (including migrants) to be served by: two bilingual-bicultural teachers or one bilingual-bicultural teacher and one mono-bicultural teacher; two bilingual community para-professionals and one or more volunteer parents;
- team teaching and small group methodologies such as those which presently characterize the open classroom concept will be utilized;
- development of curriculum materials and methodologies to reflect a culturally pluralistic instructional approach;
- evaluation and subsequent modification of all instructional materials for the removal of all stereotyping historical misrepresentations and other negative cultural presentations;
- implementation of both English as a second language and Spanish as a second language components as part of the instructional program;
- implementation of individualized and small group instructional activities for meeting specific learning needs of individual children or groups of children;
- utilization of bilingual-bicultural staff specialists in diagnostic roles for the development of prescriptive teaching;
- initiation of comprehensive staff development activities responsive to the implementation of these strategies.

These strategies must be implemented within the context of heterogenous classroom composition which includes the absorption of migrant children and handicapped children as members of all classroom populations with the exception of severely handicapped children who cannot function in the regular classroom.

C. Grades 5-6

In grades 5 and 6 the San Felipe Del Rio Consolidated Independent School District shall implement a two-phased development plan which will enable all students enrolled in the 5th and 6th grade in September 1972 to be full participants in the bilingual-bicultural instructional program which accepts the child's preferred mode of communication (i.e., language system) as the language of instruction while one or more additional language systems are developed. This shall be accomplished by the implementation of at least the following:

In 1971-72:

- Assignment of bilingual-bicultural resource teachers at a ratio of one teacher to three hundred students to serve fifth and sixth grade classrooms;
- Initiation of English as a second language strategies on a prescriptive basis for students diagnosed to need additional English language development;
- Initiation of Spanish as a second language program for all children; initiation of prescriptive Spanish as a second language instruction for children diagnosed as deficient in Spanish language development;
- Implementation of individualized, individually prescribed and small group instruction;
- Development of culturally relevant, fair and reinforcing instructional materials in social studies;
- Evaluation and subsequent modification of all instructional materials for the elimination of all stereotyping, historical misrepresentations and other negative cultural presentations;
- Assignment of bilingual/bicultural staff specialists in diagnostic roles for the development of prescriptive teaching.

In 1972-73:

- Initiation of a bilingual/bicultural instructional program which accepts the child's preferred mode of communication (i.e., language system) as the language of instruction while one or more additional language systems are developed;
- Development or adaptation of instructional materials to ensure reinforcement of both the languages and the various cultures represented in the student body;
- Continuation of English as a second language and Spanish as a second language instruction on a prescriptive basis to serve children diagnosed as deficient in either language.

D. Grades 7-8

The two-phase program implemented in grades 5 and 6 shall be implemented within the identical time sequence in grades seven and eight. Additionally, the district shall:

- Implement a comprehensive counseling program using bilingual-bicultural personnel aimed at decreasing the drop-out rate and increasing both the availability of academic options for students preparing to enter high school and their receptivity to such options;
- Implementation of inter-cultural awareness and understanding program utilizing group guidance and other appropriate strategies.

E. Grades 9, 10, 11 and 12

The San Felipe Del Rio Consolidated Independent School District shall implement, as soon as practicable and prior to the 1972-73 school year, a program which includes: (1) the immediate implementation of instructional and non-instructional activities which respond to the pluralistic characteristics of the student population, provide sequence and continuity to the instructional activities conducted at the two previous high schools, and respond to the motivational styles and socio-economic constraints of students from differing socio-economic and cultural backgrounds; and (2) the development of an instructional program including course offerings, instructional materials, and methodologies which respond to and capitalize on the needs and capibilities of students who have been involved in bilingual/bicultural education. This shall be accomplished by implementation of at least the following:

- Assignment of bilingual/bicultural diagnostic staff specialists among testing and evaluation personnel;
- Assignment of bilingual/bicultural personnel in the guidance and counseling program of the school;
- Assignment of one bilingual/bicultural teacher to implement English as a second language instruction on a prescriptive basis;
- Development of an intensive program to identify scholarships and financial assistance for disadvantaged and all other students, with priority to be given to disadvantaged students, assist disadvantaged and all other students in enrolling in college, with priority to be given to disadvantaged students;
- Modification and expansion of literature and social studies curriculum to reflect pluralistic characteristics of the student population; provide cultural reinforcement, and historical, anthropological and sociological accuracy;

- Modification and expansion of home economics curriculum to respond to the life styles, family structures and needs of children in all cultures represented in the student body;
- Assignment of bilingual/bicultural personnel to coordinate development and implementation of literature, social studies and home economics programs;
- Initiation of ethnic studies courses;
- Evaluation of vocational education and home economics programs in terms of (1) relevance of offerings to current community needs and projected needs and (2) the maintenance of student-centered decision making as to options within and without vocational education;
- Implementation of an inter-cultural awareness and understanding program utilizing group guidance and other appropriate strategies;
- Assignment of bilingual/bicultural High School Curriculum Development Director whose duty shall be to develop an instructional program, including course offerings instructional materials and methodologies which respond to and capitalize on the needs and capabilities of students.

F. Summer and Enrichment Programs

The San Felipe Del Rio Consolidated Independent School District shall develop programs beyond the regular instructional programs which effectively continue to extend the services extended to children in the districts prior to consolidation. Summer pre-school and elementary programs, neighborhood youth corps programs and other enrichment programs would be offered. The new school district shall continue the practice of providing summer job opportunities for disadvantaged college students in the summer programs.

IV. STUDENT ASSIGNMENT AND CLASSROOM ORGANIZATION

The combined migrant student projections for the San Felipe Del Rio Consolidated Independent School District indicate that approximately 1,100 students qualify as migrants. This represents approximately 15% of the total school population.

Special educational needs of migrant students will necessitate the instructional grouping of such students for a portion of the regular school day. Such groupings, however, will not exceed one hour of the regular school day. Migrant students will be assigned to regular heterogeneous classrooms and provisions for classroom spaces (to be reserved for migrant students) shall be made at the beginning of the academic year, in order that migrant students be assured of placement in regular classrooms. Student assignment to courses which require or utilize pre-enrollment or pre-registration procedures will be made on a first-come, first-serve basis. Students from the two consolidating districts will be allowed to enroll in any courses having as prerequisites courses not offered in the school they previously attended or not required as part of the basic academic program the student was pursuing in the previously attended school, upon recommendation of the principal of the school which the student previously attended.

V. STAFF DEVELOPMENT

A. Basic Assumptions

1. Discriminatory practices and prejudice have no place in either the education of children or the selection and training of staff;
2. The fruition of any curriculum design is contingent upon maintaining the most competent available personnel;
3. For an adequate program of bilingual/bicultural education to function, bilingual/bicultural personnel reflective of the various ethnic and cultural backgrounds of the student body must be employed;
4. The needed competencies and understanding requisite to a desirable educational program for all children can be developed through careful staff selection and effective in-service training.

B. Staff Development Plan

The following staff development is designed to provide equal access to the full benefits of the District's educational program for all children in the District.

1. The San Felipe Del Rio Consolidated School District will develop and implement a comprehensive staff development plan which will increase the capabilities of the District's staff (administrative, instructional, counseling, and para-professional) to respond to the needs of minority group students and all other students.
2. The District should submit this plan to a court appointed Multi-Ethnic Advisory Committee for review, comment and suggestions no later than thirty days from the appointment of such committee. The approved plan should be ready for initiation within sixty days from the date the School Board receives the report of the Multi-Ethnic Advisory Committee.
3. The Staff Development Plan will include as a minimum the following components:
   (a) Direct involvement of community representatives of all ethnic groups on an equal basis in planning, implementation, monitoring and evaluation.

(b) Involvement of school personnel from all levels on an equal basis in planning, implementation, monitoring and evaluation.

(c) Appointment, within thirty days of approval of the Staff Development Plan, of a full-time Staff Development Plan Coordinator. The Multi-Ethnic Advisory Committee should be consulted on recommendations for the Coordinator and should work with the Superintendent in developing the job description for the position.

(d) Immediate initiation of systematic and intensive efforts to recruit minority group staff at the professional, para-professional and non-professional level.

(e) Immediate development of a management plan to implement the staff development plan and to ensure continued involvement by all segments of the community in all phases.

(f) Initiation of a Special Career Development Program. This program will provide and support the identification, multiple-level entry and placement of Mexican-American and other minority group members into all levels of the school system (i.e., administrative, supervisory, pupil personnel services, guidance and counseling, teaching and other supportive staff).

To ensure effective implementation of this component, the Multi-Ethnic Advisory Committee shall designate a three-person sub-committee from its membership to monitor this aspect of the Plan. The Special Career Development Program will include as a minimum:

1. Specific selective criteria which reflect the need in this system for competent bilingual/bicultural supervisory, administrative and teaching personnel who are sensitive to the needs of all children.
2. A time schedule designed to bring systemwide minority employment to an equitable level at the administrative, supervisory and teaching levels.
3. A plan for disseminating information on specific selection criteria to all levels of the system and the community, in accordance with the orders of the court.
4. Provisions to ensure upward mobility of minority group personnel into supervisory and administrative positions at all levels based on individual demonstrated and potential ability and District needs.

(g) Initiation of a systemwide staff training program developed through joint staff and community effort which will include at least the following components:

1. Cultural awareness training that will include School Board members, key community leaders, administrative staff, teaching personnel, counseling and guidance personnel and parents.
2. Curriculum development to meet the needs of all children.
3. Pupil diagnosis, prescriptive teaching and behavior modification strategies.
4. Bilingual, oral language assessment and ESL training.
5. Team teaching and differentiated staffing.
6. Tests and measurements techniques for measuring bicultural student performance.

Such a staff training program shall be implemented with technical assistance support provided by resources both external and internal to the District. All of the above training activities shall be initiated during the 1971-72 school year.

(h) The San Felipe Del Rio Consolidated Independent School District and representatives from appropriate teacher training institutions will execute plans leading to training activities which will assist participants where appropriate in obtaining credit toward certification.

VI. PARENT AND COMMUNITY INVOLVEMENT

An essential element of a comprehensive educational program is the active involvement of parents and other community members in planning and operating the schools. If the atmosphere is one of cooperation, the parents view the school as a partner in a difficult but rewarding task -- the education of children. Teachers also learn from parents about the cultural and environmental background of the children. With appropriate staff development, teachers can draw on parent and community resources in providing learning experiences which meet the needs of all the children in school.

Accordingly, multi-ethnic school community councils will be established for the school district. The councils will be provided by the District with training and guidance essential to educate their members with the basic concepts of effective educational planning and evaluation.

The School Community Councils shall make a yearly evaluation of the new consolidated district's education program and shall assist the school district in formulating education goals and objectives. The School Community Councils shall assist the school district in the assignment and evaluation of students for possible placement in Educably Mentally Retarded and Minimally Brain Injured classes.

VII. SPECIAL EDUCATION

The assignment of students to special education classes has been specified by the Texas Education Agency regulations. These specifications will be followed specifically in conducting the special education program of the District. In addition, a consultant will be employed to suggest program modification and improvements within the Texas Education guidelines.

The following steps will be taken:

(1) As in the case of the other staff, recruitment and selection of special education teachers will include those who can teach in both Spanish and English, and who have an understanding of the cultural backgrounds of minority group children and all other children in the program.

(2) The continued development and implementation of adequate screening, appraisal and assignment techniques that have as an integral part the assessment of the child's behavior at home, at school, and among his peers, and that in no way penalize those students whose home language is Spanish.

(3) The continued development of curricula and individualized teaching strategies that reflect the particular needs of the bilingual/bicultural child.

(4) An intensive effort to maintain a communication bridge between the parent and the school in such a way that parents not only have a knowledge of the entire special education program and its effect on their child, but also are assisted by the school to provide considerable input into the functioning of the program.

(5) Inclusion of special education staff in the staff training program to develop an awareness of the cultural and linguistic factors that each child brings to school.

The committee that makes final assignment of students to special education classes shall include at least one Mexican-American teacher and one Mexican-American parent. This linkage will again serve as a source of dissemination of programs, goals and objective information from school to community. The total committee should reflect the overall ethnic composition of the students in the total program.

All communications with parents, written and oral, shall continue to be in the language they best understand.

VIII. NON-INSTRUCTIONAL SUPPORT

Co-curricular activities (all school-related activities that can be classified as non-academic) play an important part in the total educational experience of students. In order to assure equal educational opportunity in the new consolidated district, the following steps will be taken:

A. A new co-curricular program shall be developed so as to reflect the background and interests of all students in the consolidated district, including but not limited to: school councils, honors organizations and programs, clubs, bands, parent organizations, booster clubs, school mascots, songs, chants, cheers, fraternities and sororities, school publications, dramatic activities, social activities such as dances, proms and banquets.

B. The reorganization and development of the new co-curricular program shall proceed on the basis that all previously existing school mascots, songs, chants, newspaper and yearbook names and school club or organization names are now null and void. The new student body in each school shall by general election select and name all of the above-named items, subject to approval of the School Board in the event that any of the named items are given names which are offensive or against public policy.

C. All organizations, clubs and activities of the consolidating districts shall be merged by holding new elections for officers of organizations and clubs and reorganizing social and athletic activities.

D. Special consideration shall be given to the naming of honor students in the 1971-72 school year by the San Felipe Del Rio Consolidated Independent School District. The 1972 graduating class shall have co-valedictorians and co-salutatorians named from the 1970-71 eleventh grade classes at the former Del Rio and former San Felipe high schools, respectively.

IX. FUNDING AND TIMING

It is recognized that implementation of the foregoing Plan will require an expenditure of funds greater than the amount now being expended by the district. It is also understood that the implementation of some programs contained in the Plan is dependent upon availability of additional funds from Federal, State, local or other sources.

Taking into account the funding problems confronting the San Felipe Del Rio Consolidated Independent School District, the following will be done immediately:

(a) Each element of the foregoing Comprehensive Education Plan now being carried on in the District will be continued and those elements of each program component that can be implemented from resources presently available to the District will be implemented;

(b) The District will, in good faith, continue to make application for sufficient funds from Federal, State and other sources to effectuate all elements of the Comprehensive Plan. Assistance in locating, making application for and securing funds for the Comprehensive Plan will be sought and provided on a continuing basis through the Department of Health, Education and Welfare, the United States Office of Education, the Texas Education Agency and elsewhere in compliance with the orders of this Court.

Insofar as the school district is capable of implementing all elements of the Comprehensive Plan immediately, the following priorities, for expenditure of funds and utilization of personnel, are established:

1. Staff training and development in accordance with the requirements of the Plan.
2. The bilingual/bicultural educational programs presently being operated or called for in accordance with the Plan.
3. Early childhood education program for three, four and five year olds.
4. Counseling programs for seven and eight grade levels, presently in operation or called for in accordance with the Plan.
5. The program for teaching of English as a second language, presently being operated or called for in accordance with the Plan.
6. Special Education.
7. All other components of the Plan not listed above.

The obligation of the San Felipe Del Rio Consolidated Independent School District exists above and apart from the question of financing, and the District will commit such local funds as are available to the implementation of the Comprehensive Plan.

Special reports relating to the efforts being made to obtain funds from Federal, State and other sources to effectuate all elements of the Comprehensive Plan shall be made to this court by the Superintendent of the San Felipe Del Rio Consolidated Independent School District on the 12th and 28th days of each month for the remainder of the 1971-72 school year, beginning December 12, 1971. Specific and detailed explanations of any obstacles encountered shall also be reported. Copies of such report shall be forwarded forthwith to counsel for all parties, including counsel for the Amici Curiae, and to each of the members of the panel of the Court of Appeals for the Fifth Circuit which may consider this civil action on appeal.

Progress toward full implementation of the Comprehensive Plan will be reported to the Court, copies to the parties, on February 15, 1972 and May 15, 1972 and semi-annually thereafter on October 15 and February 15. Each report to the Court will describe in detail the elements of the Plan not in operation at that time. For those elements not in operation an explanation will be required, and a description of efforts to secure funding will be required.

X. EVALUATION OF COMPREHENSIVE EDUCATIONAL PLAN

The school district administrative staff shall develop a comprehensive evalution plan for all programs hereinbefore described. This evaluation process shall include a component for determining the effectiveness of all programs with respect to individual students as well as students as part of a racial or ethnic group.

To insure a more comprehensive evaluation process, an educational consultant team shall be invited to work with administrators, teachers, and parents in an effort to provide educational expertise in resolving any problems confronted in the implementation of the comprehensive plan.

SIGNED and ENTERED this 6th day of December, 1971.

UNITED STATES DISTRICT JUDGE

C. Decision in *Aspira* v. *Board of Education of the City of New York,* 58 F.R.D. 6 (S.D.N.Y., 1973)

The court denied a motion to dismiss the complaint for failure to state a claim. The decision preceded the Supreme Court decision in Lau.

D. Decision in *Serna* v. *Portales Municipal Schools*, 499 F.2d 1147 (C.A. 10, 1974)

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY, 1974, TERM

JUDY SERNA, a minor through her parent)
and general guardian, Romana Serna;)
YOLANDA ARAGON, minor, through her parent)
and general guardian, Bessie Perez;)
VIRGINIA LUCERO, minor, through her)
parent and general guardian, Perto)
Lucero, JOSE ANTONIO MEZA, minor,)
through his parent and general guardian,)
Antonia Meza, CHICANO YOUTH ASSOCIATION,)
an unincorporated association; individually)
and on behalf of all others)
similarly situated,)
)
Plaintiffs-Appellees,)
)
v.)
) No. 73-1737
PORTALES MUNICIPAL SCHOOLS; BOB WOOD,)
HERMAN WALLACE, GORDON HATCH, MORTON)
GRAGG, FRANK BARNETT, as members of)
the Portales Municipal Schools Board)
of Education, L. C. COZZENS, as Superintendent)
of the School District;)
MORRIS WOOD, as Principal of Brown)
Elementary School; JOHN GLASSCOCK, as)
Principal of Lindsey Elementary,)
LLOYD JACKSON, as Principal of Portales)
Junior High; RUSSELL KNUDSON, as)
Principal of Portales High School; all)
sued in both their individual and)
official capacities,)
)
Defendants-Appellants.)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
(District Court No. 8994)

Charles A. Pharis, Albuquerque, New Mexico, for Defendants-Appellants.

Vilma S. Martinez, San Francisco, California (Sanford Jay Rosen, Alan B. Exelrod and Michael A. Mendelson, San Francisco, California; David W. Bonem, Clovis, New Mexico; Dah Sosa, Jr., Las Cruces, New Mexico, on the brief), for Plaintiffs-Appellees.

C. Emery Cuddy, Jr., Santa Fe, New Mexico, for Amicus Curiae State Board of Education.

Before HILL and McWILLIAMS, United States Circuit Judges, and DURFEE,* Judge.

HILL, Circuit Judge.

Appellees in this class action are Spanish surnamed Americans seeking declaratory and injunctive relief against Portales Municipal School District for alleged constitutional and statutory violations committed under color of state law. In particular, appellees contend that appellant-school district has deprived them of their right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and of their statutory rights under Title VI of the 1964 Civil Rights Act, specifically § 601, 42 U.S.C. 2000(d). Jurisdiction is invoked under 28 U.S.C. § 1343.

Pertinent facts include the following. The City of Portales, New Mexico, has a substantial number of Spanish surnamed residents. Accordingly, a sizable minority of students attending the Portales schools are Spanish surnamed. Evidence indicates that many of these students know very little English when they enter the school system. They speak Spanish at home and grow up in a Spanish culture totally alien to the environment thrust upon them in the Portales school system. The result is a lower achievement level than their Anglo-American counterparts, and a higher percentage of school dropouts.

For the 1971-72 school year approximately 34 percent of the children attending Portales' four elementary schools, Lindsey, James, Steiner and Brown, were Spanish surnamed.[1/] The junior high school and senior high school enrollments of Spanish surnamed students were 29 percent and 17 percent, respectively. Unquestionably as Spanish surnamed children advanced to the higher grades a disproportionate number of them quit school.

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* Honorable James R. Durfee, United States Court of Claims, sitting by designation.

[1/] Lindsey school's enrollment consisted of nearly 86 percent Spanish surnamed children while the ethnic composition of students at the other three elementary schools was 78 to 88 percent Anglo.

Appellees in their complaint charge appellant with discriminating against Spanish surnamed students in numerous respects. Allegedly there is discrimination in appellants' failure to provide bilingual instruction which takes into account the special educational needs of the Mexican-American student; failure to hire any teachers of Mexican-American descent; failure to structure a curriculum that takes into account the particular education needs of Mexican-American children; failure to structure a curriculum that reflects the historical contributions of people of Mexican and Spanish descent to the State of New Mexico and the United States; and failure to hire and employ any administrators including superintendents, assistant superintendents, principals, vice-principals, and truant officers of Mexican-American descent. This failure to provide equal educational opportunities allegedly deprived appellees and all others

similarly situated of their right to equal protection of the laws under the Fourteenth Amendment.

At trial appellees presented the following evidence to support their allegations. Until 1970 none of the teachers in the Portales schools was Spanish surnamed, including those teaching the Spanish language in junior and senior high school; there had never been a Spanish surnamed principal or vice-principal and there were no secretaries who spoke Spanish in the elementary grades.

Evidence was offered showing that in 1969 the report by Portales Municipal Schools to United States Commission on Civil Rights indicated that at Lindsey, the 86 percent Spanish surnamed school, only four students with Spanish surnames in the first grade spoke English as well as the average Anglo first grader. During an evaluation of the Portales Municipal Schools by the New Mexico Department of Education in 1969, the evaluation team concluded that the language arts program at Lindsey School "was below average and not meeting the needs of those children." Notwithstanding this knowledge of the plight of Spanish surnamed students in Portales, appellants neither applied for funds under the federal Bilingual Education Act, 20 U.S.C. § 880, nor accepted funds for a similar purpose when they were offered by the State of New Mexico.

Undisputed evidence shows that Spanish surnamed students do not reach the achievement levels attained by their Anglo counterparts. For example, achievement tests, which are given totally in the English language, disclose that students at Lindsey are almost a full grade behind children attending other schools in reading, language mechanics and language expression. Intelligence quotient tests show that Lindsey students fall further behind as they move from the first to the fifth grade. As the disparity in achievement levels increases between Spanish surnamed and Anglo students, so does the disparity in attendance and school dropout rates.

Expert witnesses explained what effect the Portales school system had on Spanish surnamed students. Dr. Zintz testified that when Spanish surnamed children come to school and find that their language and culture

are totally rejected and that only English is acceptable, feelings of inadequacy and lowered self esteem develop. Henry Pascual, Director of the Communicative Arts Division of the New Mexico Department of Education, stated that a child who goes to a school where he finds no evidence of his language and culture and ethnic group represented becomes withdrawn and nonparticipating. The child often lacks a positive mental attitude. Maria Gutierrez Spencer, a longtime teacher in New Mexico, testified that until a child developed a good self image not even teaching English as a second language would be successful. If a child can be made to feel worthwhile in school then he will learn even with a poor English program. Dr. Estevan Moreno, a psychologist, further elaborated on the psychological effects of thrusting Spanish surnamed students into an alien school environment. Dr. Moreno explained that children who are not achieving often demonstrate both academic and emotional disorders. They are frustrated and they express their frustration in lack of attendance, lack of school involvement and lack of community involvement. Their frustrations are reflected in hostile behavior, discipline problems and eventually dropping out of school.

Appellants' case centered around the testimony of L. C. Cozzens, Portales' superintendent of schools. Cozzens testified that for the 1971-72 school year out of approximately 80 applications for elementary school teaching positions only one application was from a Spanish surnamed person. Nevertheless, through aggressive recruiting Portales hired six Spanish surnamed teachers. At Lindsey a program was established to teach first graders English as a second language; and with the aid of federal funds a program was also established to serve the needs of pre-school Spanish surnamed children. At the high school level an ethnic studies program was initiated which would be directed primarily at the minority groups and their problems.

The faculty was encouraged to attend workshops on cultural awareness. Altogether over a third of the entire faculty attended one or more of these workshops.

After hearing all evidence, the trial court found

that in the Portales schools Spanish surnamed children do not have equal educational opportunity and thus a violation of their constitutional right to equal protection exists. The Portales School District was ordered to:

> reassess and enlarge its program directed to the specialized needs of its Spanish surnamed students at Lindsey and also to establish and operate in adequate manner programs at the other elementary schools where no bilingual-bicultural program now exists.
>
> ....
>
> Defendant school district is directed to investigate and utilize whenever possible the sources of available funds to provide equality of educational opportunity for its Spanish-surnamed students.
>
> ....
>
> It is incumbent upon the school district to increase its recruiting efforts and, if those recruiting efforts are unsuccessful, to obtain sufficient certification of Spanish-speaking teachers to allow them to teach in the district.

Appellants, in compliance with the court's order to submit a plan for remedial action within 90 days, thereafter filed a proposed plan. In essence the plan provided bilingual education for approximately 150 Lindsey students in grades one through four. Each group would be given instruction in Spanish for approximately 30 minutes daily. A Title VII bilingual program would be instituted for approximately 40 pre-school children. Practically all personnel employed for this program would be Spanish surnamed. At the junior high one Spanish surnamed teacher aide would be employed to help Spanish surnamed children experiencing difficulty in the language arts. At the high school a course in ethnic studies would be offered emphasizing minority cultures and their contribution to society. In connection with this program appellants applied to the State Department of Education for state bilingual funds. These funds would provide one bilingual-bicultural instructor for the school district's other three elementary schools, and one bilingual-bicultural teacher or teacher aide at the junior high school. Seeking other sources of funding was also promised as long as the control and supervision of the programs remained with the local board of education.

Although complying with most of the court's order, appellants noted that because enrollment is declining in the Portales schools there would be fewer teachers employed next year. Thus, very likely there would not be any positions to be filled. If a position becomes vacant, however, the school district promised to make every reasonable

effort to secure a qualified teacher with a Spanish surname.

Appellees thereafter filed a Motion for Hearing to hear appellees' objections to appellants' program. The motion was granted and at the hearing, after stating their objections to appellants' proposed plan, appellees introduced their own proposed bilingual-bicultural program. After reviewing both parties' programs, the trial court entered final judgment, adopting and adding the following to its prior memorandum opinion:

> I. Curriculum
>
> A. Lindsey Elementary
>
> All students in grades 1-3 shall receive 60 minutes per day bilingual instruction. All students in grades 4-6 shall receive 45 minutes per day bilingual instruction. These times are to be considered a minimum and should not be construed to limit additional bilingual training (i.e. the Title III self contained classroom for first graders with special English language problems).
>
> A testing system shall be devised for determining the adequacy of the above established time periods with ensuing adjustments (either an increase or decrease in bilingual instruction) as needed.
>
> B. James, Steiner and Brown Elementary
>
> All Spanish-speaking students in grades 1-6 shall receive 30 minutes per day of bilingual instruction. This program should be made available to interested non-Spanish speaking students as funding and personnel become available to expand the bilingual instruction.

A bicultural outlook should be incorporated in as many subject areas as practicable.

Testing procedures shall be established to test the results of the bilingual instruction and adjustments made accordingly.

C. Junior High

Students should be tested for English language proficiency and, if necessary, further bilingual instruction should be available for those students who display a language barrier deficiency.

D. High School

An ethnic studies course will be offered in the 1973-74 school year as an elective. This course should be continued and others added in succeeding years.

The minimum curriculum schedule set forth in A through D above is not intended to limit other bilingual programs or course offerings currently available in the Portales school system or which will become available in the future.

II. Recruiting and Hiring.

A special effort should be made to fill vacancies with qualified bilingual teachers. Recruiting should be pursued to achieve this objective.

III. Funding

Defendants appear to have complied with the court's directive to investigate and utilize sources of available funding. Efforts should continue in seeking funding for present as well as future programs which will help achieve equality of educational opportunities for Spanish-surnamed students.

Appellants promptly appealed, positing two grounds for reversal. First, appellants suggest that appellees neither have standing nor are suitable parties under Rule 23 to maintain this suit as a class action; second, that failure to afford a program of bilingual instruction to meet appellees' needs does not deny them equal protection of the law when such needs are not the result of discriminatory actions.

Appellants' first argument is that appellees are not suitable parties under Rule 23 to maintain this suit as a class action. In particular, appellants argue that appellees have failed to show that there are questions of law or fact common to the alleged class and that the claims of the representative parties are typical of the claims or defenses of that class. We disagree. National origin discrimination in equal educational opportunities is the alleged basis for this lawsuit. As the complaint and supporting evidence point out, 26 percent of the Portales school population are Spanish surnamed. Nevertheless, prior to the lawsuit there were no Spanish surnamed board of education members, teachers, counselors, or administrators. Nor was any attempt made by Portales school personnel to provide for the educational needs of Spanish surnamed children. These allegations clearly raise questions common to the class which appellees represent and are typical of the claims of that class. We therefore are convinced that appellees fully meet the rigid requirements of Rule 23 and thus properly filed this suit as a class action. Bossier Parish School Bd. v. Lemon, 370 F.2d 847 (5th Cir. 1967), *cert. den'd*, 388 U.S. 911.

Appellants also challenge appellees' standing to bring this suit because appellees have failed to show a personal stake in the outcome of this action. We cannot agree; the complaint was filed by parents of school age children and the Chicano Youth Association. Each minor child is allegedly a student in the Portales schools or was excluded therefrom. The complaint alleges that those and all Spanish surnamed school children have been subject to discrimination by the school district. We believe appellees have satisfactorily alleged that appellants' discriminatory actions caused them injury in fact and hence they have standing to sue. Flast v. Cohen, 392 U.S. 83 (1968); Baker v. Carr, 369 U.S. 186 (1962); Bossier Parish School Bd., *supra*.

Appellants next challenge the district court's holding that the Portales municipal schools denied appellees

equal protection of the law by not offering a program of bilingual education which met their special educational needs. In light of the recent Supreme Court decision in Lau v. Nichols, 42 L.W. 4165 (January 21, 1974), however, we need not decide the equal protection issue. *Lau* is a case which appellants admit is almost identical to the present one. In *Lau* non-English speaking Chinese students filed a class suit against the San Francisco Unified School District. The facts showed that only about half of the 3,457 Chinese students needing special English instruction were receiving it. The Chinese students sought relief against these unequal educational opportunities which they alleged violated the Fourteenth Amendment. The district court denied relief, and the Court of Appeals affirmed, holding that there was no violation of the equal protection clause of the Fourteenth Amendment nor of § 601 of the Civil Rights Act of 1964. The Supreme Court, without reaching the equal protection clause argument but relying solely on § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d), reversed the Court of Appeals.

The Supreme Court notes that the State of California requires English to be the basic language of instruction in public schools. Before a pupil can receive a high school diploma of graduation he must meet the standards of proficiency in English. A student who does not understand the English language and is not provided with bilingual instruction is therefore effectively precluded from any meaningful education. The Court concludes that such a state imposed policy, which makes no allowance for the needs of Chinese-speaking students, is prohibited by § 601. The reason for this is that § 601 bans discrimination based "on the ground of race, color, or national origin" in "any program or activity receiving federal financial assistance." In reaching its conclusion the Court relies heavily upon HEW regulations that require school systems to assure that students of a particular national origin are not denied the opportunity to obtain the education generally obtained by other students in the system. In particular the Court noted that HEW has ordered school systems to take remedial steps to rectify language deficiency problems.

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. 35 Fed. Reg. 11595 (1970).

Finally, the Court reasons that because the San Francisco school district contractually agreed to comply with Title VI of the 1964 Civil Rights Act and all HEW regulations, the federal government can fix the terms on which its money allotments to that district will be disbursed. The case was accordingly remanded to the Court of Appeals for the fashioning of appropriate relief.

As noted above, the factual situation in the instant case is strikingly similar to that found in *Lau*. Appellees are Spanish surnamed students who prior to this lawsuit were placed in totally English speaking schools. There is substantial evidence that most of these Spanish surnamed students are deficient in the English language; nevertheless no affirmative steps were taken by the Portales school district to rectify these language deficiencies.

The trial court noted in its memorandum opinion that appellees claimed deprivation of equal protection guaranteed by the Fourteenth Amendment and of their statutory rights under Title VI of the 1964 Civil Rights Act, specifically § 601. While the trial court reached the correct result on equal protection grounds, we choose to follow the approach adopted by the Supreme Court in *Lau*; that is, appellees were deprived of their statutory rights under Title VI of the 1964 Civil Rights Act. As in *Lau*, all able children of school age are required to attend school. N.M. Const. Art. XII, § 5. All public schools must be conducted in English. N.M. Const. Art. XXI, § 4. While Spanish surnamed children are required to attend school, and if they attend public schools the courses must be taught in English, Portales school district has failed to institute a program which will rectify language deficiencies so that these children will receive a meaningful education. The Portales school curriculum, which has the effect of discrimination even though probably no purposeful design is present, therefore violates the requisites of Title VI and the

requirement imposed by or pursuant to HEW regulations. *Lau, supra.*

Appellants argue that even if the school district were unintentionally discriminating against Spanish surnamed students prior to institution of this lawsuit, the program they presented to the trial court in compliance with the court's memorandum opinion sufficiently meets the needs of appellees. The New Mexico State Board of Education (SBE), in its Amicus Curiae brief, agrees with appellants' position and argues that the trial court's decision and the relief granted constitute unwarranted and improper judicial interference in the internal affairs of the Portales school district. After reviewing the entire record we are in agreement with the trial court's decision. The record reflects a long standing educational policy by the Portales schools that failed to take into consideration the specific needs of Spanish surnamed children. After appellants submitted a proposed bilingual-bicultural program to the trial court a hearing was held on the adequacies of this plan. At this hearing expert witnesses pointed out the fallacies of appellants' plan and in turn offered a more expansive bilingual-bicultural plan. The trial court thereafter fashioned a program which it felt would meet the needs of Spanish surnamed students in the Portales school system. We do not believe that under the unique circumstances of this case the trial court's plan is unwarranted. The evidence shows unequivocally that appellants had failed to provide appellees with a meaningful education. There was adequate evidence that appellants' proposed program was only a token plan that would not benefit appellees. Under these circumstances the trial court had a duty to fashion a program which would provide adequate relief for Spanish surnamed children. As the Court noted in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971), "[o]nce a right and a violation have been shown, the scope of a district court's equitable power to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." Under Title VI of the Civil Rights Act of 1964 appellees have a right to bilingual education. And in following the spirit of *Swann, supra,* we believe the trial court, under its inherent equitable power, can properly fashion a bilingual-bicultural program which will assure that Spanish surnamed children receive a meaningful education. *See also* Green v. School Bd., 391 U.S. 430 (1968); Brown v. Bd. of Education (II), 349 U.S. 294 (1955). We believe the trial court has formulated a just, equitable and feasible plan; accordingly we will not alter it on appeal.

The New Mexico State Board of Education stresses the effect the decision will have on the structure of public education in New Mexico. It is suggested that bilingual programs will now be necessitated throughout the state wherever a student is found who does not have adequate facility in the English language. We do not share SBE's fears. As Mr. Justice Blackmun pointed out in his concurring opinion in *Lau*, numbers are at the heart of this case and only when a substantial group is being deprived of a meaningful education will a Title VI violation exist.

E. *United States* v. *Board of Education of Waterbury*, C.A. No. 13, 465, D.Conn., May 6, 1975

Intervention by Hispanic persons allowed pursuant to Rule 24(b), Federal Rules of Civil Procedure, in remedy of phase of school desegregation case almost two years after consent decree entered. The court notes that a required desegregation plan has yet to be completed, the absence of objection to intervention and "the applicants' interest in participating in the assessment of remedial measures implementing the Court's outstanding order...."

F. *Aspira* v. *Board of Education of the City of New York*, 394 F.Supp. 1161 (S.D.N.Y., 1975)

Supplementary proceeding to identify students eligible for bilingual program under portion of consent decree* identifying plaintiff class as "Hispanic children, whose 'English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish'...." Ruling - "Hispanic-surnamed students who scored below the 20th percentile on the L.A.B. [Language Assessment Battery]-English will take the L.A.B. [Language Assessment Battery]-Spanish. Those whose scores on the latter exceed their scores on the former are to be in plaintiff class." (1166; explanation added)

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*The consent decree appears at p. 147, infra.

G. *Morgan* v. *Kerrigan*, C.A. 72-911-G, D.Mass., Excerpt from Opinion on Remedy, June 5, 1975, Slip Opinion, pp. 65-67

* * *

...In Madison Park District, for example, at every district school each of the three major racial or ethnic groups will be strongly represented, but none will make up a majority. "Other minority" students in this district--slightly more than half of them Oriental, most of the remainder Hispanic--will constitute from one-fifth to slightly less than a third of each school's student body.

The plan's assignment guidelines thus take account of "other minority" students, but do not simply aggregate them with black students, in prescribing school composition limits. Plaintiffs-intervenors, El Comite de Padres Pro Defensa de la Educacion Bilingue, representing the class of Spanish-speaking students and their parents, have stressed their right to adequate bilingual education. The remedy accordingly concentrates on providing bilingual schooling for Hispanic students and for others in need of this service.

Assignment of bilingual students before others will prevent excessive dispersal. Thus the "clustering" of bilingual classes will be possible and Boston's schools will be enabled to fulfill the promise of this state's exemplary bilingual education law (Transitional Bilingual Education Act, Mass. G.L. c.71A), as well as to meet the requirements of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000d). See 35 Federal Register 11595 (1970); Lau v. Nichols, 1974, 414 U.S. 563; United States v. Texas Education Agency, 5 Cir. 1972 (en banc), 467 F.2d 848, motion to clarify mandate denied, 5 Cir. 1973, 470 F.2d 1001.

Without merely aggregating black and other minority students, the guidelines prescribed at pp. 72-76 of the plan (in conjunction with the racial compositions of the various community districts) nevertheless provide that plaintiff black students shall not be assigned to schools with only "other minority" students. Cf. Arvizu v. Waco Independent School District, W.D. Tex. 1973, 373 F.Supp. 1264, 1268-70, aff'd in part, rev'd as to other issues, 5 Cir. 1974, 495 F.2d 499. This result is appropriate to satisfy both of the primary concerns of desegregation. Black students should not be assigned in a manner that suggests they have been relegated to "minority" schools, for the "segregated" quality of a school depends in part on the way the community looks upon that school (see Keyes, supra, 413 U.S. at 196); and black students ought not to be assigned in a manner that isolates them from the majority culture. The assignment guidelines aim for three-way desegregation in the schools for two primary reasons: first, to provide a proper remedy for the plaintiff class of black students and parents; second, to afford to all groups--white, black and other minority--the sense of adequate representation that can help achieve peaceful and lasting desegregation.

* * *

H. *Evans* v. *Buchanan,* C.A. Nos. 1816-1822, D.Del., June 26, 1975

Application by Hispanic persons to intervene at remedy phase of school desegregation case after court has adopted a schedule for filing of desegregation plans and comments. Rulings: (1) While "the issue of whether and to what extent the fourteenth amendment and federal statutes require Delaware school authorities to provide bilingual and bicultural education to Hispanic children cannot be adjudicated in the present proceeding," "the interests of the applicants should be considered in developing any desegregation plans. Compare, Lau v. Nichols, 414 U.S. 563 (1974)(statutory right of non-English speaking students to special language instruction); United States v. Texas Education Agency, 467 F.2d 848, 869 ('No remedy for the dual system can be acceptable if it operates to deprive members of a third ethnic group of the benefits of equal educational opportunity.')." (2) The court will withhold ruling at this time, the applicants will be given amicus curiae status, and the court assumes that school authorities will comply with reasonable requests for information.

(Note: The application to intervene was subsequently allowed on October 21, 1975.)

I. *Morales* v. *Shannon*, 516 F.2d 411, 414-15 (C.A. 5, 1975) (excerpts)*

* * *

III

It is admitted that most Mexican-American students enter school with English language deficiencies and this brings us to the next contention of appellants, that a bilingual-bicultural education program is necessary to permit the Mexican-American students to continue and develop intellectual capacity in Spanish while gradually becoming proficient in English. They point out that the school district has never applied for federally-funded programs, although available, and that the refusal of the district to meet the special needs of its Mexican-American students is a form of continuing discrimination. This again may involve a teaching technique.

We required defendants to supplement the record to the extent of disclosing any recent developments in a bilingual-bicultural approach to education. It now appears that a program was instituted in the 1973-74 school year in this regard, and that in January of 1974 a Texas statute was enacted requiring bilingual-bicultural programs in the elementary schools of Texas. Defendants represent that such a program was commenced for the first grade beginning with the 1974-75 term, and that one grade will be added each year through the sixth grade. Defendants also reported as follows:

> "Oral language development is taught in Spanish. It is also taught in English at another time period.
>
> "Culture is taught in Spanish with an emphasis on an English vocabulary.
>
> "Math is taught primarily in English with reinforcement in Spanish.
>
> "Our classes are kept small, not over 20-22 students in each class. We have an aide in each classroom, either the teacher or aide, in most cases both, is bilingual.
>
> "Our bilingual-bicultural teachers all attended a bilingual-bicultural workshop provided by the Texas Education Agency this past summer. The workshop was conducted by the Bilingual Institute of El Paso, Texas."

The report also indicates other progress in the bilingual-bicultural area.

It strikes us that this entire question goes to a matter reserved to educators. However, on the off chance that defendants are engaging in discriminatory practices in the program as it currently exists, we pretermit decision here and remand to the district court for further consideration there on a fresh record in the event appellants determine to pursue the question.[1] It is now an unlawful educational practice to fail to take appropriate action to overcome language barriers. See § 204(f) of The Equal Educational Opportunity Act of 1974 [20 U.S.C.A. § 1703(f)]. See also Lau v. Nichols, 1974, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1.

* * *

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[*] In the portions of the opinion not included here, the court addresses the segregation of Mexican-American students in elementary schools, ability grouping, and teacher hiring and assignment. Plaintiffs prevailed only on the first issue.

[1] We take note of the fact that appellants have taken a parallel course by proceeding against defendants in HEW on the same claims as were presented in the district court with the end in mind of obtaining corrective action under the penalty of having federal funds to the school district terminated. The holding to date on segregatory intent through two adjudicatory levels is the same as ours. The administrative law judge found no discrimination with respect to issues 2 (ability grouping), 3 (bilingual-bicultural training), and 4 (faculty-staff), supra, but was reversed as to 2 and 3 by the HEW Reviewing Authority. The entire matter is on appeal to the Secretary of HEW at this time in accordance with 45 C.F.R. § 80.10(e).

J. Decisions in *Keyes* v. *School District No. 1, Denver,* 380 F.Supp. 673, 692, 694-96 (D.Colo., 1974) (excerpts), reversed, ____ F.2d ____ (C.A. 10, 1975) (excerpts)

1. District Court Decision

* * *

Adoption of the Bilingual-Bicultural Plan of Dr. Cardenas

In view of the very large population of Mexican-Americans or Chicanos in the Denver school system, the Cardenas or bilingual-bicultural approach to the education of this minority group is a very sensible method and to the extent that it can be useful to building bridges between the Spanish and Anglo cultures, it is to be fully utilized. At present some initial effort is being made at the Del Pueblo Elementary School along this line and undoubtedly a good deal has been learned from this pilot or model program. It is the view of the court that this system of teaching should be installed in Baker Junior High School and West High School, both of which have large Chicano populations. It seems desirable also that it be installed in the Swansea School.

Some representatives of the Mexican-American community in this case have expressed a desire not to desegregate the Del Pueblo School during the period that the program is developing. The court can see advantages in this and therefore holds that desegregation is not in its best interests. The Swansea School does not offer any serious segregation problem since it now has approximately 35% Anglo population and thus reassignments are not necessary here either and, again, the bilingual program should be installed at this school. The exact mechanics for implementing this program are not clear and, therefore, the School District must employ consultants to aid this process.

It is recognized that most of our Spanish surnamed or Mexican-American children are able to speak English and thus teaching in the Spanish language would not be necessary. Nevertheless, the Spanish language is a more natural one for a great many Spanish surnamed or Mexican-American students. Thus, extensive curriculum offerings in the Spanish language and in Spanish culture would be appropriate in the mentioned schools.

As noted, further comments and an analysis of the Cardenas plan is appended to this opinion, and the Cardenas plan itself is in the record in this case.

* * *

APPENDIX A: ANALYSIS OF THE "CARDENAS PLAN"
SUBMITTED FOR THE COURT'S CONSIDERATION BY INTERVENORS,
CONGRESS OF HISPANIC EDUCATORS

The Congress of Hispanic Educators, one of the intervenors in this action, has submitted for the court's consideration an education plan for the Denver Public Schools prepared by Dr. Jose Cardenas, as well as an addendum to that plan which attempts to adapt the plan to the specific conditions in the Denver schools. Dr. Cardenas' educational plan is directed toward dealing with the problems which minority children encounter when they are introduced to a school system which, Dr. Cardenas asserts, is oriented more to educating the middle class Anglo youngster than the poor minority child.

While many of the elements of Dr. Cardenas' plan are equally applicable to the problems of all minority groups, the plan is particularly directed toward the educational problems of Mexican-American children, who comprise an appreciable segment of the pupils in the Denver school system. Briefly stated, Dr. Cardenas recommends adjustments in the Denver educational system over a wide range of areas which he feels will make that system more compatible to the minority child's economic circumstances, his cultural and language orientation, his high degree of mobility, and his perceptions of himself and the world around him. Dr. Cardenas' plan is at heart based on the conviction that minority youngsters often fail or perform poorly in the typical American school system today, because the school the child attends, whether integrated or segregated, is largely an alien world to him, where classes, including the most basic of skills, are taught in a language which the child often does not comprehend or lacks facility in, where he is asked to relate to experiences which have no relevance to him outside the school, and where he is often taught to regard negatively his own background, culture and personal abilities.

The basic goal behind the constitutional requirement of desegregation of the public schools is to end the social isolation of minority children which hinders or prevents them from entering the mainstream of American society. As was stated in Brown I, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954):

> To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

347 U.S. at 494.

The Court at the same time emphasized the critical importance which an adequate, meaningful, equal education plays in insuring the minority child a place in American society:

> Today, education is...a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

347 U.S. at 493.

It seems apparent that a school system should strive to make the "opportunity" of an education something that all children in that system can avail themselves of. Otherwise much of the value and purpose of requiring the dismantling of illegal dual systems is dissipated. It seems particularly important at the present time that the Denver educational system be responsive to the educational needs of minority black and Chicano students as well as those of the majority Anglos.[1]

One educational element called for by the proposed Cardenas plan is the utilization of bilingual training, particularly in the low elementary grades. Currently many elementary school Chicano children are expected not only to learn a language with which they are unfamiliar, but also to acquire normal basic learning skills which are taught through the medium of that unfamiliar language. Some provisions for effecting a transition of Spanish-speaking children to the English language will clearly be a necessary adjunct to this court's desegregation plan.[2] Furthermore, this court is mindful that meaningful desegregation must be accompanied by some appropriate alterations of existing educational programs in order to adequately deal with new problems which will arise in the operation of desegregated rather than segregated schools.

The type of educational program proposed by Dr. Cardenas is particularly appropriate for the Denver school system because of the city's and region's long tradition of Mexican and Chicano influences. Additionally, Colorado law specifically encourages the use of bilingual and multicultural programs such as those proposed by the Cardenas plan to effect an enriching and non-disruptive transition of minority children from their dominant language to the effective use of English.[3]

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[1] According to figures compiled by the School District at the commencement of the 1973 school year, black and Chicano students constituted 17.6% and 27.0% respectively of the total elementary school enrollment in the District. The minority percentage was slightly lower in the junior high and high schools.

[2] See Lau v. Nichols, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974). After integrating its school system in 1971 as a result of federal court order, the city of San Francisco had over 2,800 students of Chinese ancestry in the school system who were non-English speakers. Supplemental English courses were given to only about 1,000 of these students. Emphasizing that California law placed prime importance upon use of English in the school system, although permitting bilingual education under certain circumstances, the Court found the situation as it existed in San Francisco to be violative of § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. That section bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance." (San Francisco's schools were receiving large amounts of federal assistance.) The Court expressly declined to reach the issue of whether the condition also constituted a violation of the Equal Protection Clause of the Fourteenth Amendment.

[3] 1963 CRS 123-21-3. Policy of state to instruct in English--exceptions--Instruction in the common branches of study in the public schools of this state shall be conducted principally through the medium of the English language; except that it shall be the policy of the state also to encourage the school districts of the state to develop bilingual skills and to assist pupils whose experience is largely in a language other than English to make an effective transition to English, with the least possible interference in other learning activities. (Footnote continued on next page.)

Most of the opposition to the Cardenas plan generated during the evidentiary hearings went to the practicality of the plan and to problems of its implementation rather than to the educational principles espoused. Clearly the plan in the scope proposed could not be fully implemented throughout the district immediately. The plan would require coordination by the School District with other city and state agencies, hiring of new faculty and administrative personnel or additional training of current personnel, and experimentation to determine which specific aspects of the plan are best suited to Denver's situation. Nevertheless, the court feels that a prompt start should be made in a pilot program for implementation and utilization of the Cardenas plan, or something similar to it, in Denver. The court proposes the use of the Del Pueblo Elementary School as a voluntary open school for implementation of the plan during the 1974-75 school year, with similar programs to be developed on a pilot basis at Baker Junior High and West High, as they are constituted under the court's final desegregation plan. Similarly, Garden Place and Swansea Elementary Schools appear to the court to be proper subjects for the pilot program.

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3. (continued)

123-21-4. Teaching of history, culture, and civil government--(1) The history and civil government of the state of Colorado shall be taught in all the public schools of this state.

(2) In addition, the history and civil government of the United States, including the history, culture, and contributions of minorities, including, but not limited to, the Spanish Americans and the American Negroes, shall be taught in all the public schools of the state.

Did the court properly leave certain predominantly Hispano schools segregated?

Under the district court's order, five elementary schools would be left with minority enrollments ranging between 77% and 88%.[15] The court justified the continued segregation of the students in four of these schools--Cheltenham, Del Pueblo, Elyria, and Garden Place--on grounds of the schools' inaccessibility and the institution or continuation of bilingual-bicultural programs; 380 F. Supp. at 692, 717. The court offered no justification for the continued segregation of students at Boulevard School.

In Swann, supra, the Supreme Court held that:

> [I]n a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition. 402 U.S. 1, 26.

In our view, the five schools noted are "substantially disproportionate in their racial composition," within the Court's meaning. The continued segregation of students at these schools must therefore be justified either on the ground that practical or other legitimate considerations render desegregation unwise, or on the basis of proof that the racial compositions of these schools is not the result of past discriminatory action on the part of the Board. See Swann, supra, 402 U.S. at 26.

Given our reversal, infra, of the district court's adoption of the Cardenas Plan, institution of that Plan cannot justify continued segregation of any of the noted schools. Bilingual education, moreover, is not a substitute for desegregation. Although bilingual instruction may be required to prevent the isolation of minority students in a predominantly Anglo school system, see Lau v. Nichols, 414 U.S. 563; Serna v. Portales Municipal Schools, 10 Cir., 499 F2 1147, such instruction must be subordinate to a plan of school desegregation.

We therefore remand this portion of the case for a determination whether the continued segregation of students at the five mentioned schools may be justified on grounds other than the institution and development of bilingual-bicultural programs at the schools. "The district judge . . . should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools." Swann, supra, 402 U.S. at 26.

IV.

We now consider claims of the School Board that certain aspects of the district court's order--other than those having to do with student reassignments and transportation considered above--transgressed the limits of the

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[15]

Boulevard	88% minority
Cheltenham.	80% "
Del Pueblo.	77.9% "
Elyria.	77.3% "
Garden Place.	83.7% "

court's power to fashion a desegregation remedy for the Denver school system.

The Cardenas Plan

Intervenor Congress of Hispanic Educators (CHE) submitted to the court a plan for the bicultural-bilingual education of minority children in Denver authored by Dr. Jose A. Cardenas. In its April 17, 1974 Final Judgment and Decree the district court ordered school authorities to implement, on a pilot basis, either the Cardenas Plan "or a plan substantially and materially similar thereto and incorporating to the extent feasible the proposals set forth in the Addendum to the Cardenas Plan." The court ordered establishment of the pilot program at Del Pueblo, Cheltenham, Garden Place, and Swansea Elementary Schools, at Baker Junior High School, and at West High School.

The Cardenas Plan is premised on the theory that the poor performance of minority children in public schools results from "incompatibilities" between cultural and developmental characteristics of minority children on the one hand, and the methods and expectations of the school system on the other. Because most school systems are operated to meet the needs of middle-class Anglo children, the theory continues, they inevitably fail to meet the different needs of poor minority children. Conflicts between the Anglo system and the needs of minorities are pervasive. The Cardenas Plan therefore requires an overhaul of the system's entire approach

to education of minorities; its proposals extend to matters of educational philosophy, governance, instructional scope and sequence, curriculum, student evaluation, staffing, non-instructional service and community involvement. The Plan also proposes a mechanism for comprehensive monitoring of the program's status. Continuing evaluation by ten "Equal Educational Opportunity Committees," each composed in part of persons from outside the school system, is necessary, according to the Plan, because the school system itself "lacks accountability." In the Addendum to the Cardenas Plan, intervenor CHE details how the Plan would be applied in Denver. These proposals, it must be emphasized, touch virtually every aspect of curriculum planning, methodology and philosophy presently the responsibility of local school authorities. CHE proposes, for example, the inclusion of specific courses in the curriculum, adoption and publication of specific educational principles, provision of early childhood education (beginning at age three) and adult education for minorities, and provision of adequate clothing for poor minority school children.

Plaintiffs and CHE contend that inclusion of the Cardenas Plan in the court's order may be justified on either of two grounds. First, the Plan is necessary to effectuate meaningful segregation in the schools. School authorities, it is argued, must be forced not only to end the separation of races but also to establish a receptive scholastic environment for minority students in order to eradicate the very evil at which Brown v. Board of Education, 347 U.S. 483 (Brown I) and subsequent cases have been directed, that is, isolation of minority students in an essentially alien school system. This appears to be the rationale of the court below for inclusion of the Plan in its remedy.[16] Second, it is argued, the Cardenas Plan corrects the School Board's failure to provide an equal educational opportunity for minority children. In an earlier phase of this case, the district court found that Denver's predominantly minority schools provided students with an inferior education;[17] this, plaintiffs argue, constitutes a separate violation of the fourteenth amendment to which the Cardenas Plan is reasonably directed. We believe, however, that under either rationale the district court's adoption of the Cardenas Plan oversteps the limits of its remedial powers.

Courts have the power to effectuate their remedial orders by removing all obstacles to meaningful desegregation. Brown II, supra, 349 U.S. at 299-300. The equitable power to order relief adjunct to desegregation is limited, however, by considerations that loom significantly in the present case. One of these, as we have noted, is the extent of the proven constitutional violation and its relationship to the ordered relief. On remand from the Supreme Court, the district court determined that specified actions of the School Board in the Park Hill area of Denver constitute the entire school system a dual system. The court made no finding, on remand, that either the School District's curricular offerings or its methods of educating minority students constituted illegal segregative conduct or resulted from such conduct. Rather the court determined that since "many elementary school Chicano children are expected . . . to acquire normal basic learning skills which are taught through the medium of [an] unfamiliar language," a meaningful desegregation plan must provide for the transition of Spanish-speaking children to the English language. 380 F. Supp. at 695. But the court's adoption of the Cardenas Plan, in our view, goes well beyond helping Hispano school children to reach the proficiency in English necessary to learn other basic subjects. Instead of merely removing obstacles to effective desegregation, the court's order would impose upon school authorities a pervasive and detailed system for the education of minority children. We believe this goes too far.

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[16] The district court stated:

> [M]eaningful desegregation must be accompanied by some appropriate alterations of existing educational programs in order to adequately deal with new problems which will arise in the operation of desegregation rather than segregated schools. 380 F. Supp. at 695.

[17] In 1970, the district court examined 15 predominantly minority schools in Denver and concluded:

> The evidence in the case at bar establishes . . . that an equal educational opportunity is not being provided at the subject segregated schools. . . . Many factors contribute to the inferior status of these schools, but the predominant one appears to be the enforced isolation imposed in the name of neighborhood schools and housing patterns. 313 F. Supp. 61, 83.

The court held that the maintenance of inferior segregated schools violated the rights of students to equal protection of the laws, irrespective of whether the segregated conditions resulted from state action. Id. This court reversed the district court on the ground that the federal courts are powerless to resolve educational difficulties arising from circumstances outside the ambit of state action. 445 F2 990, 1004-05. Plaintiffs submitted this issue to the Supreme Court, but the Court did not reach it. See 413 U.S. 189, 214 n. 18.

Other considerations lead us to the same conclusion. Direct local control over decisions vitally affecting the education of children "has long been thought essential both to the maintenance of community concern and support for public schools and to the quality of the educational process." Milliken v. Bradley, 418 U.S. 717, 741, 742; Wright v. Council of the City of Emporia, 407 U.S. at 451, 469. Local control permits citizen participation in the formulation of school policy and encourages innovation to meet particular local needs. Educational policy, moreover, is an area in which the courts' "lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at state and local levels." San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 42. The policy of the state of Colorado is to encourage local school districts to develop bilingual skills and to assist in the transition of non-English-speaking students to English.[18/] The state legislature has established a comprehensive program for the education of children of migrant workers[19/] and has mandated the teaching of minority group history and culture in all public schools.[20/] Denver school authorities maintain a variety of programs for assistance of children who have learning difficulties because they come from non-English-speaking families.[21/]

[18/] 1973 Colo. Rev. Stat. § 22-1-103.

[19/] Id. § 22-23-101 et seq.

[20/] Id. § 22-1-104.

[21/] The School Board operates a Diagnostic Teaching Center designed to facilitate in non-English-speaking students "maximum growth of the English language for communication and verbal expression and to maintain pride in [their] language and culture." The Board also maintains an early childhood English program, and bilingual education programs in certain elementary and junior high schools.

We believe that the district court's adoption of the Cardenas Plan would unjustifiably interfere with such state and local attempts to deal with the myriad economic, social, and philosophical problems connected with the education of minority students.

The clear implication of arguments in support of the court's adoption of the Cardenas Plan is that minority students are entitled under the fourteenth amendment to an educational experience tailored to their unique cultural and developmental needs. Although enlightened educational theory may well demand as much, the Constitution does not. In San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35-37, the Supreme Court held that education is not a right protected by the Constitution except, perhaps, insofar as some minimal quantum of education may be necessary to enable the exercise of the basic rights of speech and voting. Of course, where the state has undertaken to provide an education to its citizens, it must be made available to all on equal terms. Brown I, supra, 347 U.S. at 483. But the plaintiffs and intervenor in the present case argue for a right to differential treatment of minority children in the educational process. As the Court stated in Rodriguez:

> [E]very reform that benefits some more than others may be criticized for what it fails to accomplish. But we think it plain that, in substance, the thrust of the [state's educational] system is affirmative and reformatory and, therefore, should be scrutinized under judicial principles sensitive to the nature of the State's efforts . . . . 411 U.S. at 39.

Thus we refuse to affirm the court's adoption of the Cardenas Plan on the second ground urged by the parties, that is, that the school's alleged failure to adapt to the cultural and economic needs of minority students amounts to a violation of the fourteenth amendment.

Neither Lau v. Nichols, 414 U.S. 563, nor this court's holding in Serna v. Portales Municipal Schools, 10 Cir., 499 F2 1147, is contrary to our position. Both of these cases stopped short of reaching any constitutional issue. In both, school authorities were held, rather, to have violated section 601 of the 1964 Civil Rights Act, 42 U.S.C. § 2000d, in failing to provide language instruction to substantial numbers of non-English-speaking children enrolled in public schools.[22/]

We vacate that portion of the district court's order that would require the School Board to implement the Cardenas Plan or a plan substantially similar to it. We remand for a determination of the relief, if any, necessary to ensure that Hispano and other minority children will have the opportunity to acquire proficiency in the English language.

22/ Plaintiffs attempt to support adoption of the Cardenas Plan with allegations that the School Board has violated section 601 with respect to non-English-speaking students. We note that in the 1973-74 school year, Denver school authorities identified 344 students in the system with language difficulties arising from their Spanish-speaking backgrounds. School authorities determined that 251 of these students needed special help in acquiring language skills necessary to function satisfactorily in school. A number of programs were directed to the needs of these students. On the basis of these facts and after reviewing the record, we are unable to find any support for a violation of section 601. Even if such a violation were supported by the record, moreover, we believe the Cardenas Plan would, for reasons we have indicated, overstep the scope of a remedy properly directed to the violation.

K. *Bradley* v. *Milliken*, C.A. No. 35, 257, E.D.Mich., August 16, 1975
(excerpts from opinion and order, pages 115 and 8, respectively)

* * *

10. Bilingual/Multi-Ethnic Studies

Multi-ethnic studies are essential elements of the curriculum of any outstanding school system; desegregation serves only to emphasize the need for inclusion of these studies. Moreover, by state law school districts are required to provide adequate programs for bilingual and bicultural instruction. See Mich. Comp. Laws §§340, 360, 390, 391. The court order will further provide for these programs.

Currently, these programs are funded by Titles III and VII of ESAA. The Board is directed to re-apply for such funds to continue its program and in such application shall include provisions for in-service training for teachers involved in offering such programs. The School Board is further directed to seek the cooperation of Wayne State University's Ethnic Learning Resource Center to participate in and develop a resource program for comprehensive multi-ethnic instruction.

The Board shall submit finalized programs for each of these studies to the court including provisions for in-service training of the teachers involved.[18]

* * *

IT IS FURTHER ORDERED that:

(1) The Detroit Board of Education shall, consistent with the guidelines contained in the court's Memorandum Opinion, institute comprehensive programs for:

In-Service Training;

Bi-Lingual/Multi-Ethnic Studies;

Counseling and Career Guidance;

Testing;

Co-Curricular Activities.

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[18] While we endorse the inclusion of these programs in a desegregation plan, we draw no conclusions with respect to the budget submitted by the Board in its plan, which appears to us to be excessive. Even assuming 163 bilingual teachers are needed, there should be a corresponding reduction in the number of regular classroom teachers.

Addendum

Otero v. Mesa County Valley School District No. 51, C.A. No. 74-W-279, D.Colo., Decision, 12/31/75 (Clearinghouse No. 17,500)

Action seeking bilingual-bicultural education program in Colorado school system with enrollment of 8.2 percent Mexican-American students. Relying upon the testimony of Dr. Jose Cardenas, plaintiffs contend that there is "an educational incompatibility between District 51's educational program and the learning style of [Chicano students] to the degree that they do not effectively and equally benefit from the school's program...." Plaintiffs also present hiring discrimination claims. Rulings (in dismissing suit): (1)Crediting tests administered by the school system rather than a survey conducted at plaintiffs' request, the court finds that "there is no deficiency on the part of a significant number of Mexican-American students in English language proficiency, and the students who are deficient in English are also deficient in Spanish." (Mem. Op., p.6) (2) "Testing procedures are to be determined by good faith decisions made by local school boards in accordance with the good faith recommendations of any independently employed experts." (p.9) (3) Relying upon Keyes v. School District No. 1, Denver, 521 F.2d 465 (C.A. 10, 1975), the court rules: "It is settled, then, that under Tenth Circuit law there is no constitutional right to bilingual/bicultural education, and our appellate court has held that even where there is segregation [and there is none in District 51] a trial court cannot impose the Cardenas Plan on a school district." (p.15) (4) Plaintiffs have not established a claim under 42 U.S.C. 2000d, as construed in Lau v. Nichols, 414 U.S. 563 (1973) and Serna v. Portales Municipal Schools, 499 F.2d 1147 (C.A. 10, 1974), since this "case involves a very few, if any, students who have real language deficiency" and "the school officials are doing their best and are doing a good job." (p.17) (5) The court rejects the hiring claim, finding plaintiffs without standing, and, alternatively, that the system has made every reasonable effort to hire the limited number of available, qualified Mexican-American applicants. (p.25)

Notes: (1) Lau v. Nichols, 414 U.S. 563 (1974), has led to a considerable litigative effort to secure bilingual-bicultural education. It is important to note the limitations of the Lau decision and how they relate to the result in Otero. (a) In Lau, there were "2,856 students of Chinese ancestry...who do not speak English." (564) Of this group, approximately 1800 received no supplemental instruction and were, therefore, "effectively foreclosed from any meaningful education." (566) Here, in contrast, the court does not find a class of students of limited English speaking ability. Clearly, this factual issue must receive considerable attention by counsel prior to the filing of a suit. In Lau, the concurring opinion of Justices Blackmun and Burger specifically referred to the fact that the case did not involve "a very few youngsters, or...just a single child who speaks only German or Polish or Spanish or any language other than English...." They noted that they would not find Lau "conclusive" on that issue. (572) (b) In Lau, the Court "[did] not reach" the equal protection argument (566); nor did it address the question of a remedy for the violation of 42 U.S.C. 2000d and its implementing regulations and guidelines which it found. ("No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioners ask only that the Board of Education be directed to apply its expertise to the problem and rectify the situation.") (564-565) Lau, in short, does not establish a right to an optimal bilingual-bicultural education program. (2) If a violation of 42 U.S.C. 2000d is found, there are several ways to seek a meaningful program: (a) utilization of the August 1975 HEW memorandum, discussed at p.2, reprinted at p.225, (this memo, applicable when a Title VI violation is found, is not discussed in Otero); (b) implementation of a sound state law; see Morgan v. Kerrigan, 401 F.Supp. 216, 242 (D. Mass., 1975), aff'd, F.2d (C.A.1, 1976); Bradley v. Milliken, 402 F.Supp. 1096, 1144 (E.D. Mich., 1975); (c) a court-developed plan, based in part on plaintiffs' submission, where a school system defaults in its responsibility to propose a remedy; see Serna v. Portales Municipal Schools, 499 F.2d 1147, 1154 (C.A. 10, 1974); (d) by a consent agreement; see Aspira of New York v. Board of Education of the City of New York, C.A. No. 4002 (MEF), (S.D.N.Y., agreement 8/29/74).

III. Complaints and Other Litigation Materials

This section contains complaints (*Aspira*, *Rios* and *Evans*), a memorandum of law (*Aspira*), a motion for further relief (*United States* v. *State of Texas*), and interrogatories (*United States* v. *State of Texas*).

The complaints in *Aspira* and *Rios* initiated actions. The complaint in *Evans* was for intervention in a pending school desegregation case.

Note that the complaints in *Aspira*, *Rios* and *Evans* state claims based upon 42 U.S.C. 2000d (non-discrimination in programs receiving federal financial assistance). While this section does not expressly create a private right of action, it has been recognized to do so by inference. See *Lau* v. *Nichols*, 414 U.S. 563 (1974); *Lemon* v. *Bossier Parish School Board*, 370 F.2d 847, 850-51 (C.A. 5), cert. denied, 388 U.S. 911 (1967).

It should also be noted that the complaints in *Aspira* and *Rios* do not include claims based upon the Equal Educational Opportunity Act of 1974. See 20 U.S.C. 1703f, text at p. 239, *infra*. The complaint in *Evans* and the motion for further relief in *United States* v. *State of Texas* do refer to Section 1703f of the E.E.O.A. See pp. 112, *115 infra*. See also *Morales* v. *Shannon*, 516 F.2d 411, 415 (C.A. 5, 1975) ("It is now an unlawful educational practice to fail to take appropriate action to overcome language barriers. See §204f of the Equal Educational Opportunity Act of 1974 [20 U.S.C.A. §1703f]. See also *Lau* v. *Nichols*, 1974, 414 U.S. 563....") The complete text of the *Morales* opinion on bilingual education appears at p. 49, *supra*.

A. Complaint in *Aspira v. Board of Education of the City of New York*, C.A. No. 72 Civ. 4002 (MEF), S.D.N.Y., filed September 20, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASPIRA OF NEW YORK, INC.,

ASPIRA OF AMERICA, INC.,

LUZ MARIA OLIVO, individually and on behalf of her minor children, EDWIN OLIVO and IVETTE OLIVO,

CRUCITA HERRERA, individually and on behalf of her minor children ASTRID HERRERA, JOSE HERRERA, YVONNE HERRERA, ARIEL HERRERA, and KEELY HERRERA,

MARIANA MERCADO, individually and on behalf of her children JUAN MERCADO, EFRAIN MERCADO, and AIDA MERCADO,

ELENA GARCIA, individually and on behalf of her minor child HECTOR GARCIA,

CARMEN RUIZ, individually and on behalf of her minor children ROBERTO RUIZ and ANTONIO RUIZ,

LUZ MARIA RAMOS, individually and on behalf of her minor child ANDREA SERRANO,

CLARAMINA OLIVERAS, individually and on behalf of her child ADELI PEREZ,

Plaintiffs,

-against-

COMPLAINT - CLASS ACTION

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

JOSEPH MONSERRAT, individually and in his official capacity as President of the Board of Education of the City of New York,

MURRY BERGTRAUM, individually and in his official capacity as a member of the Board of Education of the City of New York,

ISAIAH ROBINSON, JR., individually and in his official capacity as a member of the Board of Education of the City of New York,

SEYMOUR P. LACHMAN, individually and in his official capacity as a member of the Board of Education of the City of New York,

(Continued next page)

JAMES F. REGAN, individually and in his official capacity as a member of the Board of Education of the City of New York,

HARVEY SCRIBNER, individually and in his official capacity as the Chancellor of the City School District of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 9 OF THE CITY OF NEW YORK,

EUNICE MATTIS, individually and in her official capacity as President of Community School Board District No. 9 of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 10 OF THE CITY OF NEW YORK,

Rev. MARIO ZICARELLI, individually and in his official capacity as Chairman of Community School Board District No. 10 of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 12 OF THE CITY OF NEW YORK,

ELOISE KRAUS, individually and in her official capacity as Chairwoman of Community School Board District No. 12 of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 14 OF THE CITY OF NEW YORK,

Brother ROBERT F. LALLY, individually and in his official capacity as President of Community School Board District No. 14 of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 16 OF THE CITY OF NEW YORK,

LAVERNE COX, individually and in her official capacity as Chairman of Community School Board District No. 16 of the City of New York,

Defendants.

PRELIMINARY STATEMENT

1. This is an action authorized by 42 U.S.C. §1983 to prevent the deprivation under color of law of rights protected by the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §2000d. This action seeks a declaratory judgment, and preliminary and permanent injunctions enjoining defendants from denying plaintiffs and the classes they represent an equal education opportunity in the public schools of the City of New York.

2. Plaintiffs and the members of the classes they represent are Puerto Rican and other Spanish-speaking persons who speak English poorly or not at all. They are linguistically, culturally and historically different from the dominant culture in New York City. Yet, the defendants have failed to recognize these differences in designing and implementing educational services and courses of study for plaintiffs. Specifically, they have failed to take into account the plaintiffs' inability to speak and understand English, and learn in classes conducted in the English language. Moreover, the defendants have not effectively taught the plaintiffs and their classes the English language. The failures of the defendant public officials has been catastrophic. The rates of illiteracy, semi-literacy, drop-outs and truancy in public schools for plaintiffs and their classes are shocking. Furthermore, in part because of the educational deprivation suffered by plaintiffs and their classes, the unemployment rate for Puerto Ricans in New York City soars above that for other groups. The defendants' failures have crippled and paralyzed the potential and ability of the Spanish-speaking people of this City.

JURISDICTION

3. Jurisdiction is conferred on this Court by 28 U.S.C. §1343(3),(4) as an action to redress the deprivation under color

of state law or rights, privileges and immunities guaranteed by the United States Constitution and federal statute. Declaratory relief is authorized by 28 U.S.C. §2201-2202.

CLASS ACTION ALLEGATIONS

4. Plaintiffs bring this action on their own behalf and on behalf of the two classes they represent pursuant to Rule 23(b)(1)(A), or 23(b)(2), or 23(b)(3) of the Federal Rules of Civil Procedure. Defendants have acted on grounds generally applicable to the two classes respectively thereby making appropriate final injunctive relief with respect to the classes.

5. The first class consists of over 170,000 students who (a) attend the public schools of the City of New York, (b) speak, read, write and comprehend the English language with substantial difficulty or not at all, (c) primarily speak the Spanish language, and (d) are not receiving any educational services which takes into account their linguistic needs.

6. The second class consists of about 12,000 students who (a) attend the public schools of the City of New York, (b) speak, read, write and comprehend the English language with substantial difficulty or not at all, and (c) primarily speak the Spanish language and (d) are receiving some educational services intended to take into account their linguistic needs but which services are inadequate.

7. Plaintiffs can fairly and adequately protect the interests of the classes. They are represented by attorneys employed by Community Action for Legal Services, Inc. an agency funded by the United States Office of Economic Opportunity and the Puerto Rican Legal Defense & Education Fund, Inc. These

organizations have resources and experience in the area of constitutional litigation adequate to protect all members of the classes. Plaintiffs know of no conflicts of interest among the members of the classes.

3. Plaintiffs' claims are typical of the claims of the classes. There are questions of law and fact common to the classes: whether defendants have failed to provide plaintiffs and their classes with equal educational opportunities in violation of their rights under the United States Constitution, and federal statutes and regulations.

9. The prosecution of separate actions would create a risk of inconsistent adjudications establishing incompatible standards of conduct for defendants. The common questions of law and fact predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiffs know of no interest of members of the classes to proceed individually with this action.

PLAINTIFFS

10. ASPIRA of New York, Inc. is a non-profit corporation duly organized under the laws of the State of New York. The primary purpose of ASPIRA of New York, Inc. is to develop the intellectual and creative capacity of Puerto Ricans living in the State of New York by motivating said Puerto Ricans to continue their education in the professions, arts and technical fields so that such persons may offer their skills for the betterment of the community.

11. Aspira of America, Inc. is a non-profit corporation duly organized under the laws of the State of New York. It is the national office for Aspira and its affiliates throughout the United States including ASPIRA of New York, Inc. Aspira of America, Inc.'s primary purpose is to develop the intellectual and creative capacity of Puerto Ricans living in those States where affiliates have been established by motivating said Puerto Ricans to continue their education in the professions, arts and technical fields so that such persons may offer their skills for the betterment of the community.

12. The individual plaintiffs are Puerto Rican school children and their parents who are their representatives. Each child was born in Puerto Rico and comes from a family in which Spanish is the predominant, if not the only, spoken language. Each attends a public school in New York City. The individual plaintiffs are all citizens of the United States and of the State of New York, and residents of the City of New York.

13. Plaintiffs LUZ MARIA RAMOS, and her daughter ANDREA SERRANO, age 14, reside in Kings County, New York. ANDREA reads, writes, speaks and understands Spanish and before coming to New York in July, 1970 was receiving her education in Puerto Rico and was making normal progress. Since arriving in New York City ANDREA has attended Junior High School 111. ANDREA received instruction in English as a Second Language during the 1970-71 and 1971-72 academic years. After two years of this special instruction ANDREA cannot speak, read or write English and cannot understand even the simplest questions directed at her. Although she received a grade of 80 in her English as a Second Language course, she has a definite language barrier and cannot participate in class discussion. In her other subjects ANDREA has grades ranging from 70 to 55. ANDREA, who is to enter the eighth grade, has a reading level in English of 2.8 (second year, eighth month).

14. Plaintiffs LUZ MARIA OLIVO and her children, EDWIN OLIVO and IVETTE OLIVO reside in Kings County. EDWIN, age 9, and IVETTE, age 10, attended elementary school in Puerto Rico where they were taught in Spanish. They speak, read, write and comprehend Spanish and were making normal progress in their school in Puerto Rico. They have attended P.S. 120 since their arrival in New York City in December, 1971, and were placed in the same grade, third and fourth respectively, they would have been in had they remained in Puerto Rico. Plaintiffs EDWIN and IVETTE OLIVO speak, read, write and comprehend English with substantial difficulty. Neither child received adequate instruction in English nor achieved any progress in their regular subjects, and, as a result both were left back.

15. Plaintiffs CRUCITA HERRERA and her children ASTRID, and JOSE, twins age 10, YVONNE, age 9, ARIEL, age 8 and KEELY, age 6 1/2 reside in Bronx County. ASTRID, JOSE and KEELY have been in New York City for the last two years and before that ASTRID and JOSE attended elementary school in Puerto Rico where they were taught in Spanish. ASTRID and JOSE speak, read and write Spanish and were making normal progress in their school in Puerto Rico. KEELY who speaks Spanish attended kindergarten in

Puerto Rico and was placed in kindergarten when she entered the New York City school system. YVONNE and ARIEL have been in New York City for one year and before that they attended elementary school in Puerto Rico where they were taught in Spanish. YVONNE and ARIEL speak, read and write Spanish. YVONNE and ARIEL were making normal progress in their school in Puerto Rico.

16. The HERRERA children all speak, read, write and comprehend English with substantial difficulty. Until March, 1972, all of the HERRERA children attended P.S. 134 in Community School Board District No. 12 where they received instruction in English as a Second Language for approximately one-half hour daily. In March, at the request of the Department of Social Services of the City of New York, the plaintiffs moved out of Community School Board District No. 12 and the children were required to attend school at P.S. 63 in Community School Board District No. 9. The HERRERA children receive no instruction in English as a Second Language in P.S. 63. As a result of their inability to read, speak, write and comprehend English, the HERRERA children are working well below their grade level.

17. Plaintiffs MARIANA MERCADO and her children, JUAN, age 14, EFRAIN, age 8, and AIDA, age 7, reside in Kings County, and have resided in New York City since May, 1969. JUAN attended elementary school in Puerto Rico where he was taught in Spanish. He reads, writes, speaks and comprehends Spanish and was making normal progress in his school in Puerto Rico. JUAN attended regular classes at Junior High School 111 during the academic year 1971-72 and was in the seventh grade. He reads, writes,

speaks and understands English with substantial difficulty and last year received instruction in English as a Second Language. Because this special instruction was inadequate, JUAN failed to make normal progress in his regular subjects.

18. Plaintiffs EFRAIN and AIDA MERCADO started school in New York City. Both attend P.S. 120 and will enter the third and second grade respectively in September, 1972. They speak and understand Spanish, but have substantial difficulty speaking understanding, reading and writing English. Neither EFRAIN nor AIDA receive any special instruction to overcome their English language difficulties.

19. Plaintiffs ELENA GARCIA and her son, HECTOR, age 14, reside in Kings County, New York. HECTOR reads, writes, speaks and understands Spanish and before coming to New York City in 1969 he was attending school in Puerto Rico where he was making normal progress. HECTOR attends regular classes at Junior High School 111 and is presently in the eighth grade. During the 1971-72 school year he was offered a class in English as a Second Language for one hour, three times a week. Because this special instruction was inadequate he continues to speak, read, write and understand English with substantial difficulty and as a result he has failed to make normal progress.

20. CARMEN RUIZ, and her children, ROBERTO, age 16, and ANTONIO, age 14, reside in Bronx County, and came to New York City in May, 1971. ROBERTO went to elementary and junior high school in Puerto Rico where he was taught in Spanish and was making normal progress. ANTONIO went to elementary school in Puerto Rico until the sixth grade where he was taught in Spanish and was making normal progress. Both ROBERTO and ANTONIO speak

read, write and understand English with substantial difficulty. As a result of their English difficulty both ROBERTO and ANTONIO were placed in English as a Second Language classes for the 1971-72 academic year. ANTONIO'S instruction in English as a Second Language terminated after three months when the teacher left the school and was not replaced. ROBERTO is being given course work which is of primary school level whereas he would have been doing work on a secondary school level had he stayed in Puerto Rico. ANTONIO is also working well below his grade level.

21. Plaintiffs, CLARAMINA OLIVERAS and her son ADELI PEREZ, age 15, reside in Kings County. Before coming to New York City in July, 1970, ADELI attended school in Puerto Rico where he was taught in Spanish. He speaks, reads, writes and understands Spanish and was making normal progress in school in Puerto Rico. Since arriving in New York City ADELI has attended Junior High School 111 where he is now in the eighth grade. He received instruction in English as a Second Language and although he received a passing grade in that subject he continues to speak, read, write and understand English with substantial difficulty.

DEFENDANTS

22. The Board of Education of the City School District of the City of New York has sole responsibility for the operation and administration of the public high schools and shares responsibility for the operation and administration of the public elementary and junior high schools.

23. JOSEPH MONSERRAT is President and MURRY BERGTRAUM, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., and JAMES F. REGAN are members of the Board of Education of the City School District of the City of New York.

24. HARVEY SCRIBNER is the Chancellor of the City School District of the City of New York. As such, he has administrative responsibility of the operation of the public high schools and shares administrative responsibility for the operation of the public elementary and junior high schools of the City of New York.

25. Community School Board District No. 9 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

26. EUNICE MATTIS is President of Community School Board District No. 9.

27. Community School Board District No. 10 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

28. REV. MARIO ZICARELLI is Chairman of Community School Board District No. 10.

29. Community School Board District No. 12 is one of the thirty-one (31) Community School Boards in New York City. It

shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

30. ELOISE KRAUS is Chairwoman of Community School Board District No. 12.

31. Community School Board District No. 14 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

32. BROTHER ROBERT F. LALLY is President of Community School Board District No. 14.

33. Community School Board District No. 16 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

34. LAVERNE COX is Chairman of Community School Board District No. 16.

STATEMENT OF CLAIM

(a) Plaintiffs Have Been Denied Equal Educational Opportunity

35. Plaintiffs and their classes (hereinafter referred to as "plaintiffs") attend the public schools of the City of New York. They represent and have represented for over twenty

years a significant portion of the public school student population. In the 1970-71 school year, there were 1.1 million students in the New York City public schools. Of those, 260,040 were Puerto Rican and 39,240 were other Spanish surnamed Americans. Together these two groups composed 26.3% of the total student population. More than half of these 300,000 students are members of plaintiffs' classes.

36. The primary language of plaintiffs is Spanish; they read, write, speak and comprehend English with substantial difficulty or not at all.

37. The educational services and programs provided plaintiffs in the public schools takes place predominantly and in most cases exclusively in English. The teachers who teach the classes attended by plaintiffs speak to them only in English. The text books used by plaintiffs are written only in English.

38. None of plaintiffs are taught the English language so that they can read, write, speak and understand it without substantial difficulty. Some plaintiffs are not receiving any special instruction in the English language which takes into account their linguistic needs. Other plaintiffs are receiving special instruction in the English language but such instruction is totally inadequate. Moreover, they are not being taught the Spanish language and as a result many of the plaintiffs are illiterate in both Spanish and English.

39. As a result of the defendants failure to teach the plaintiffs the English language and their practice of providing course instruction only in English, the plaintiffs are unable to learn the subject matter taught in the public school system.

40. Plaintiffs differ from the dominant culture in more than language. The basic cultural and historical heritage of plaintiffs is materially and significantly different from that of the dominant groups in New York City. These differences are also material to the educational services and courses of study that should be provided plaintiffs.

41. Defendants' failure to recognize these linguistic and cultural differences and to implement educational services which reflect these differences has had destructive educational, psychological and sociological consequences for plaintiffs.

42. In those few cases where defendants have made changes in the curriculum to account for these linguistic and cultural differences, the changes are woefully inadequate.

43. The number of Spanish-speaking non-English-speaking students is larger than that recognized by defendants. The defendants to not use an objective, reliable, standardized test in evaluating and classifying plaintiffs with respect to their ability and achievement in the English language. As a result the defendants regularly and frequently misclassify the English language ability and achievement of the plaintiffs thereby minimizing the number of students who are classified as having substantial difficulty in the English language.

44. As a result of the foregoing, the plaintiffs are being provided with an education substantially inferior to that offered to other students in the New York City public school system. They are being deprived of their right to equal access to an education and its concomitant benefits. Consequently, they are being denied their right to an equal educational opportunity.

45. This denial of an equal educational opportunity is reflected in the following ways:

A. English Reading Levels: Defendants annually administer the Metropolitan Reading Achievement Test throughout the public schools of the City of New York. The results of that test disclose that (1) the reading level of plaintiffs is below the reading level of black children which in turn is below the reading level of white children, (2) the differences between the reading levels of plaintiffs and all other children increases with each year of education, and (3) by the eighth grade of education plaintiffs' reading level is nearly two years below that of white children. Moreover, defendants do not give the test to over 28,000 children including plaintiffs because they speak, read, write and comprehend English with such severe difficulty, if at all, as to make the results meaningless.

B. Truancy and drop-out rates: plaintiffs have a materially higher truancy and drop-out rate than white students and higher truancy and drop-out rate than black students. Approximately 70%-80% of all plaintiffs drop out of school before completion.

C. Academic and Vocational High Schools: plaintiffs are under-represented in the academic high schools and over-represented in the vocational high schools. Of the 234,842 students in academic high schools for the 1970-71 school year, only 44,772 or 18% were Puerto Rican or other Spanish-speaking students. Of the 37,878 students in vocational high schools, 13,478 or 34% were Puerto Ricans or other Spanish-speaking students.

D. High School Graduation: plaintiffs are materially under-represented in high school graduation classes. For the 1970 school year, roughly 10% of the graduation classes were Puerto Rican or other Spanish surname students.

E. Admission into City University of New York: plaintiffs are materially under-represented in the freshman classes of the branches of the City University of New York. For the school year 1970-71, only 7.7% of the 35,000 freshman students were Puerto Rican or other Spanish surnamed students.

(b) Defendants Have Discriminated Against Plaintiffs On The Basis Of National Origin, Ethnicity and Race

46. The failure of defendants to provide plaintiffs with an equal educational opportunity has been recognized and admitted by defendants themselves.

47. Defendant Scribner in testimony given at the Puerto Rican People's Hearings on May 15, 1972 stated:

> Approximately 95,000 of the Puerto Rican students and approximately 22,600 of the other Spanish-speaking students have difficulty with the English language. In a system of education when English is the language of instruction and the medium of communication, the student who is not fluent in English obviously is at a severe disadvantage when it comes to learning. (emphasis added)

48. Defendant Scribner in testimony before a Joint Hearing held by the Senate Finance Committee and the Assembly Ways and Means Committee on the Governor's Executive Budget on February 9, 1972 stated:

> The state of urban public education is perilous. This is true not only in New York City, not only in the other major cities of New York State, but in the urban centers throughout the nation.
>
> The children and youth who, by law, attend the public schools in the cities of this State have a multitude of needs which are not yet being fully met in a satisfactory way....
>
> New York City needs funds to provide new educational services for students who do not speak English. New York City enrolls approximately 160,000 non-English speaking students who need -- and deserve -- special programs and services. (emphasis added)

49. A recent study prepared for the defendant central Board of Education urged a major expansion of bilingual education programs in order "to change the present conditions, which are contributing to the failure of Puerto Rican children in the classroom." (Mary Jenkins, Bilingual Education in New York City (May 1971), prepared for the program of Recruitment and Training of Spanish-speaking Teachers: Board of Education, Office of Personnel.)

50. The conditions about which plaintiffs complain have existed to a substantial degree for over two decades and continue to worsen. Defendants have not been ignorant of these conditions. They have known of them almost from the beginning. They have studied them, issued reports about them, and issued resolutions

and policy statements about them. But they have done little or nothing to develop and implement educational programs to adequately remedy these conditions and thus have denied plaintiffs an equal educational opportunity.

51. In that connection, defendants have barely committed any financial support to develop and implement such programs. For example, during the 1970-71 school year, less than $2.6 million was allocated for these programs. This is less than 1.5% of an approximate annual budget of $2 billion. Thus, less than 16,000 students were served by these programs; this is less than 10% of the classes represented by plaintiffs.

52. In addition, most of the programs developed and implemented by the defendants are woefully inadequate and fail to provide the students assigned to them an equal educational opportunity.

53. In denying plaintiffs an equal educational opportunity defendants have knowingly and willfully discriminated against them on the basis of national origin, ethnicity and race.

(c) The Defendants Are Causing Plaintiffs Irreparable Injury

54. The defendants failure to provide plaintiffs with an equal educational opportunity deprives plaintiffs of an adequate education and is causing them irreparable injury.

55. As a result of defendants' failure plaintiffs are handicapped economically. They are relegated to the lowest rung on the economic ladder with little or no prospect of improving their economic status, and many will be forced into the further humiliation of reliance upon public assistance. The

United States Department of Labor's report entitled The New York Puerto Rican Patterns of Work Experience issued May, 1971, made the following findings:

> Puerto Rican workers were the most deprived of all workers residing in the city's major poverty neighborhoods. They were far more likely than others to be unemployed or to hold lower paying jobs. Typically, they held blue-collor or service jobs requiring relatively little skill. They were greatly handicapped in the competition for employment by poor educational background: on average, Puerto Ricans 25 and over, had not gone beyond the eighth grade, while the majority of the area's residents 25 and over had completed high school or gone beyond. (emphasis added)

56. Defendants' failure to teach plaintiffs either English or Spanish causes many plaintiffs to become illiterates and semi-illiterates in both English and Spanish.

57. Plaintiffs' English language handicap resulting from defendants' policies and practices severely limits plaintiffs ability to exercise their duties and rights as citizens of the United States, including the rights to serve as jurors, to petition for redress of grievances, and to fully participate in the political process.

58. Finally, defendants' failure to provide plaintiffs with equal educational opportunities has a destructive and permanent impact on the psychological condition of the plaintiffs. Because of the enormous and serious differences that exist between plaintiffs and the dominant culture and the failure of the defendants to develop educational programs and a course of study

that bridge the gap, plaintiffs experience a deep sense of alienation and inferiority which significantly hinder the likelihood of success both in the school system and in society generally.

(d) Violations Of Law

59. The public school system of the City of New York received over $125 million in financial assistance from the United States Government during the 1971-72 school year and will receive a similar sum next year. Title VI of the Civil Rights Act of 1964 and regulations promulgated thereunder, 45 C.F.R. 80, prohibit the denial of equal educational opportunities to the plaintiffs on the grounds of their race, color or national origin by the recipients of Federal financial assistance. Moreover, federal regulations, 33 F.R. 4955 and 35 F.R. 11595, provide that "each school system has an affirmative duty to take prompt and effective action to eliminate...discrimination ...based on...national origin, and to correct the effects of past discrimination." (emphasis added). Defendants' failure to provide plaintiffs with an equal educational opportunity based on their race, color or national origin is a violation of their rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, the regulations issued thereunder, and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

60. Defendants' failure to provide plaintiffs with an educational opportunity equal to that offered to other students violates their rights under the equal protection clause of the Fourteenth Amendment of the United States Constitution.

61. Defendants failure to provide plaintiffs with an education violates their right to an education under the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

62. Defendants' failure to evaluate and classify the plaintiffs English language ability and achievement through objective, reliable, and standardized testing procedures, violates their rights under the due process clause of the Fourteenth Amendment to the United States Constitution.

63. Defendants' policies and practices toward plaintiffs have the direct effect of preventing or discouraging plaintiffs from fully exercising their duties and rights as citizens of the United States including their rights to petition the Government for redress of grievances and to participate in the political process, all in violation of the First and Fourteenth Amendments to the United States Constitution.

64. Defendants' policies and practices toward the plaintiffs have the direct effect of frustrating the basic goals as ASPIRA of New York, Inc. and Aspira of America, Inc.

65. Plaintiffs and the classes they represent, have no plain adequate speedy remedy at law to redress their injuries and therefore bring this suit for declaratory and injunctive relief as their only means of securing such relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Court:

(a) Enter an order that this action is to be maintained as a class action.

(b) Enter a declaratory judgment declaring that the policies and practices of the defendants toward the plaintiffs and their classes deny them an equal educational opportunity and that such a denial violates plaintiffs' rights under the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d), and regulations promulgated thereunder.

(c) Enter a declaratory judgment declaring that an equal educational opportunity for plaintiffs and their classes requires bilingual and bi-cultural educational services and courses of study.

(d) Enter preliminary and permanent injunctions enjoining defendants from continuing to deprive plaintiffs and their classes of an equal educational opportunity.

(e) Enter preliminary and permanent injunctions requiring the defendants:

(1) to establish and implement an affirmative plan satisfactory to this Court which:

(A) provides plaintiffs and their classes with bilingual educational services and courses of study which take into account the linguistic needs and cultural differences of the plaintiffs and assure plaintiffs an equal educational opportunity;

(B) provide special programs to compensate, to the maximum extent feasible, for defendants' past failure to provide plaintiffs and their classes with an equal educational opportunity;

(C) establish adequate procedures for evaluating and classifying the English language ability and achievement of plaintiffs and their classes.

(2) to submit the above plan to the Court for approval within forty-five (45) days of the entering of the order.

(f) Establish a panel of recognized experts in the field of education of Spanish-speaking non-English-speaking students, to evaluate the plan submitted by the defendants to the Court, and to recommend to the Court approval or disapproval of the plan, or specific changes in the plan; and, under circumstances deemed appropriate by this Court, including the inadequacy of the plan proposed by defendants, such panel to proceed to develop and to submit an alternative plan, the expenses for which to be borne by the defendants.

(g) Award plaintiffs their costs and disbursements incurred herein.

(h) Award plaintiffs reasonable attorneys' fees.

(i) Grant such other and further relief as this Court may deem just and proper.

Dated: New York, New York
September 20th, 1972

Respectfully submitted,

Cesar A. Perales

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B. **Plaintiffs' Memorandum of Law filed on May 20, 1974, in *Aspira* v. *Board of Education of the City of New York*, C.A. No. 72 Civ. 4002 (MEF), S.D.N.Y., May 20, 1974**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

--x
ASPIRA OF NEW YORK, INC., et al, :
: 72 Civ. 4002 (MEF)
Plaintiffs, :
:
-against- :
:
BOARD OF EDUCATION OF THE CITY OF :
NEW YORK, et al, :
:
Defendants. :
--x

PLAINTIFFS' MEMORANDUM OF LAW REGARDING THE EDUCATIONAL PROGRAMS APPROPRIATE AND NECESSARY PURSUANT TO THE MANDATE OF LAU v. NICHOLS

TABLE OF CONTENTS

page

TABLE OF AUTHORITIES iv
- Table of Cases. iv
- Table of Other Authorities. vi

THE APPLICATION OF LAU v. NICHOLS. 1

BILINGUAL EDUCATION IS THE NECESSARY AND APPROPRIATE EDUCATIONAL PROGRAM FOR PLAINTIFFS IN ORDER TO FULFILL THEIR RIGHTS UNDER LAU v. NICHOLS. 3
- Language Arts and Comprehensive Reading Programs Which Are Introduced And Taught in Spanish. 4
- The Curriculum Content Areas Are Taught in Spanish 7
- The ESL Component 9
- Puerto Rican Culture Is Incorporated In All Aspects of The Curriculum Program 11

BILINGUAL EDUCATION HAS RECEIVED RECOGNITION BY DEFENDANTS AND OTHERS AS NECESSARY AND APPROPRIATE FOR EDUCATING CHILDREN SUCH AS PLAINTIFFS 17
- Bilingual Education - An Historical Overview. 17
- The Federal Commitment. 19
- The Defendants' Agree That Bilingual Education Is Necessary. 20
- New York State's Policy and Findings. 23

77

page

PROGRAMS 28

PERSONNEL. 29

- I Introduction. 29
- II Personnel Qualifications, Roles, Functions . 30
- III Personnel Training. 38
- IV Personnel Recruitment 45

PUPIL ASSESSMENT 49

- Initial Screening 49
- Achievement Tests 50

IMPLEMENTATION 52

MONITORING IMPLEMENTATION. 57

CONCLUSION 60

APPENDIX I i

APPENDIX II. . . . .

- Plan 1. . . . .
- Plan 2. . . . .
- Plan 3. . . . .
- Plan 4. . . . .

page

Program Description A . . . .

Program Description B . . . .

Program Description C . . . .

Program Description D . . . .

Program Description E . . . .

Program Description F . . . .

TABLE OF AUTHORITIES

Table of Cases

Pages

Arroyo v. Tucker, 73 Civ. 2247
(E.D. Pa. March 25, 1974)............................. 18

Ellis v. Board of Public Instruction,
423 F.2d 203, 206 n.3 (5th Cir. 1970).................. 57

Green v. County School Board of New Kent County,
391 U.S. 340 (1968).................................. 2

Katzenbach v. Morgan,
384 U.S. 641 (1966).................................. 18

Lau v. Nichols, 94 S.Ct. 786 (1974)..................... 1, 2

Puerto Rican Organization for Political Action
v. Kusper, 490 F.2d 575 (7th Cir. 1973)................ 18

Singleton v. Jackson Municipal Separate School
District., 419, 1211, 1217, n.2 (5th Cir. 1969,
rev'd. on other grounds sub. nom., Carter v.
West Feliciana Parish School Bd., 396 U.S. 290
(1970) enforcing sub. nom., United States v.
Hinds County School Bd., 423 F.2d 1264 (5th Cir.
1969)... 57

Sloan v. Tenth School Dist. of Wilson County,
433 F.2d 587 (6th Cir. 1970).......................... 57

Torres v. Sachs, 73 Civ. 3921 (S.D.N.Y. Sept.
26, 1973).. 18

United States v. Hinds County School Bd.,
433 F.2d 611 (5th Cir. 1970).......................... 57

United States v. Jefferson County Bd. of
Education, 372 F.2d 836 (5th Cir. 1966),
aff'd en banc, 380 F.2d 385, cert. denied
sub. nom., Caddo Parish School Bd. v. United
States, 389 U.S. 840 (1967)........................... 57

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1973), 5 E.P.D. 7814, 7815-16.......................... 57

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500 (1926)... 18

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Pages

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Christian, Chester C., Jr. "The Acculturation of the Bilingual Child". The Modern Language Journal.. 7

Donovan, Bernard E., Dr. Testimony Before The House General Sub-Committee on Education and Labor on H.R. 9840 and H.R. 10224 (1967)............. 22

Feely, Joan T. "Teaching Non-English Speaking First Graders To Read". Elementary English.......... 7

Fishman, Joshua. Language Loyalty In America......... 17

Hakes, David P. "Psychological Aspects of Bilingualism." The Modern Language Journal.......... 7

Hearing Before The United States Commission on Civil Rights (1972)............................... 6

The International Institute of Teachers College. A Survey of the Public Educational System of Puerto Rico.. 8

Jenkins, Mary. Bilingual Education In New York City.. 23

John, Vera P. and Vivian M. Horner. Early Childhood Bilingual Education.................. 5,7

Kennedy, Robert F., Sen. 111 Congressional Record 11060 (1965).............................. 14

Leibowitz. "English Literacy: Legal Sanction for Discrimination." Revista Juridica de la Universidad de Puerto Rico........................... 18

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	Pages
National Puerto Rican Development and Training Institute. "A Proposed Approach to Implement Bilingual Education Programs Research and Synthesis of Philosophical Theoretical and Practical Implications"	4,15
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Rosenthal, Robert and Lenore Jacobson. Pygmalion in the Classroom: Teacher Expectation and Pupil's Intellectual Development	16
Saville, Muriel R. and Rudolph C. Troike. A Handbook of Bilingual Education	4,5,13,15,16
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	Pages
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I

THE APPLICATION OF LAU v. NICHOLS

In accordance with the Court's Memorandum of April 30, 1974, plaintiffs submit this memorandum containing, among other things, a detailed statement of the educational programs they deem necessary and appropriate to meet the HEW regulations enforced in Lau v. Nichols, 94 S.Ct. 786 (1974).

The Supreme Court relied in part on a 1968 HEW guideline promulgated pursuant to §601 of the Civil Rights Act, 42 U.S.C. §2000(d) stating that "school systems are responsible for assuring that students of a particular race, color or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system". 33 CFR §4955. In further support of its analysis of §601 and the pertinent regulations, the Court pointed to the 1970 HEW guideline which specifically defined the affirmative duty of school systems such as defendants:

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.
>
> Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track.

Accordingly, an educational program which does not rectify plaintiffs' language deficiencies results in their receiving "less benefits than the English-speaking majority from [defendants'] school system." This denies plaintiffs a "meaningful opportunity to participate in the educational program" in violation of Lau.

Moreover, as the HEW guidelines require, the services offered by defendant must meet plaintiffs' language needs "as soon as possible" and cannot operate as an "educational dead-end or track."

It is with these standards in minds, and with the Supreme Court's pronouncements in other school discrimination cases (see e.g. Green v. County School Board of New Kent County, 391 U.S. 340 (1968)), that plaintiffs present this memorandum.

II

BILINGUAL EDUCATION IS THE NECESSARY AND APPROPRIATE EDUCATIONAL PROGRAM FOR PLAINTIFFS IN ORDER TO FULFILL THEIR RIGHTS UNDER LAU v. NICHOLS

If we accept that a child cannot learn unless teaching occurs through the language he speaks and understands; that a child who does not speak or understand English must fall behind when English is the sole or dominant medium of instruction; that a child needs to learn English so as to be able to participate in the English-speaking society; that a child's membership in a social or ethnic group must be respected if we are to allow the child the self-esteem and motivation necessary for effective learning; and that the learning of English does not require the rejection of the child's native language and culture; then any necessary and appropriate educational program for plaintiffs must incorporate each of the following four elements:

1. Language arts and comprehensive reading programs which are introduced and taught in Spanish;

2. Curriculum content areas which are taught in a language which the child fully comprehends;

3. English as a second language, which is taught through a sequentially structured program which includes understanding, speaking, reading and writing skills (the "ESL Component").

4. Puerto Rican culture, which is reflected in all aspects of the curriculum program.

Together, these elements constitute a bilingual educational program.

Language Arts and Comprehensive Reading Programs Which Are Introduced And Taught in Spanish

Mastery of basic reading skills is, perhaps, the single most important goal in a child's primary education, since reading forms the basis for much of his or her subsequent education. One of the chief weaknesses of monolingual educational programs is that they do not allow a Spanish-dominant child to begin reading in the language in which he has developed oral competence. Before a child can actually be taught to read, he must master a variety of related skills including sound discrimination, language structure, and association of words and meaning (referred to by educators as "reading readiness"). Both Spanish and English speaking children acquire these skills naturally in their homes. However, where beginning reading is taught in English, only the English child profits from these early acquired skills which are prerequisites to successful reading development.[1]

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[1] See e.g. Muriel R. Saville and Rudolph C. Troike, A Handbook of Bilingual Education, (rev. ed. 1971) 26, 50 (hereinafter cited as Saville and Troike); Theodore Andersson & Mildred Boyer, Bilingual Schooling in the United States, Vol. I, U.S. Gov't. Printing Office (1970), 3 (hereinafter cited as Andersson and Boyer); National Puerto Rican Development & Training Institute, Inc., "A Proposed Approach to Implement Bilingual Education Programs: Research and Synthesis of Philosophical Theoretical and Practical Implications", Experimental Research Division, Office of Economic Opportunity, 95 (unpublished)(hereinafter cited as National Puerto Rican Development & Training Institute).

Any reading program which attempts to teach Spanish dominant children to first read in English, not only wastes the child's acquired linguistic attributes, but impedes his learning to read English by forcing him to absorb the skills of reading simultaneously with a new language.[2] Therefore, the Spanish-dominant child who has not acquired the skills of reading should begin reading Spanish. This is applicable for children first entering school or older children entering at a higher level.

We know that a child who learns to read in his dominant language before reading English will not be learning to read twice. The basic skills of reading transfer readily from one language to another.[3] Moreover, it has been found that reading in the dominant language takes less time to develop than reading in the second language.[4]

By insisting on reading programs which ignore these facts, defendants have failed to take advantage of the Puerto Rican child's reading readiness. These children are not permitted to learn reading skills in their dominant language, and they are not equipped to learn them in English. The results of this ill-designed teaching program are reflected, in part, in the reading scores of Puerto Rican children which are the lowest of any other group.[5]

The same rationale that justifies a child's learning to read first in Spanish also justifies a program designed to develop those oral communication skills with which he enters school. The Puerto Rican child's Spanish language skills are the best means for his acquiring knowledge and selecting, organizing and expressing his ideas, particularly when he first enters school. An effective Language Arts Program taught in Spanish affords the child the opportunity to study and extend these skills. Through such a program, the student develops those skills necessary for the total use of the language--speaking, writing, understanding, and reading. Because of the close relationship between language and thought, if the child is to expand his ability to think and progress intellectually, he must expand his ability to express himself in the language he understands. The defendants should build upon these skills and encourage the child to develop and extend them.

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[2] See generally , Vera P. John and Vivian M. Horner, *Early Childhood Bilingual Education* (1971), XXIV, and authorities cited therein.

[3] Saville and Troike, *op. cit.*, 50.

[4] See Andersson & Boyer, *op. cit.*, 202.

[5] See Regents of the University of the State of New York, *Bilingual Education, A Statement of Policy and Proposed Action* (1972), 14, 15 (hereinafter cited Regents Policy Statement); Hearing Before the United States Commission on Civil Rights at 246, (February 14-15, 1972); *Report of the New York State Commission on Quality, Cost, and Financing of Elementary and Secondary Education*, "The Fleischmann Commission Report," Vol. 2, (1972) 6.37-.39 (hereinafter cited as The Fleischmann Commission Report).

The Curriculum Content Areas Are Taught in Spanish

It is evident that a child who has difficulty understanding the language in which he is taught will have difficulty understanding and learning the course content. Educators agree that the best medium, especially for the initial stages of a child's formal learning, is his dominant language.[6] Premature introduction of the second language can lead to intellectual impairment and academic retardation which is often never overcome.[7]

Educational programming which fails to take this into consideration will prejudice the achievement of Spanish-dominant children.[8] The phenomenon of intellectual retardation which is associated with teaching Spanish-dominant children in English is not disputed by defendants.[9] The defendants' failure to teach Spanish-dominant children in a language they understand is a prime example of how the educational program is closed to these children.

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6. See e.g. "The Use of Vernacular Languages in Education, Monographs on Fundamental Education, VIII (1953); Nancy Modiano, "National or Mother Language in Beginning Reading: A Comparative Study." Research in the Teaching of English, Vol. I., No. 2 (Spring 1968) 32-43; Andersson & Boyer, Id. Vol. I, 44.

7. See John and Horner, op. cit., 165-73; Joan T. Feely, "Teaching Non-English Speaking First Grades to Read," Elementary English (1970), 207; Anne Anatasi and Fernando A. Cordova, "Some Effects of Bilingualism Upon The Intelligence Test Performance of Puerto Rican Children in New York City," The Journal of Education Psychology, Vol. XLIV (1953), 3; Miles V. Zintz, Education Across Cultures (Kendall Hunt, 1969), 142-3, 262, 2$\cdot$7, 398; Northeast Conference on the Teaching of Foreign Languages, The Challenge of Bilingualism, Report of Working Committee II, in G. Reginald Bishop, Jr., ed., Foreign Language Teaching: Challenges to the Profession (1965) 77-8; Madorah F. Smith, "Measurement of Vocabularies of Young Bilingual Children in Both of the Languages Used," The Journal of Genetic Psychology, Vol. 74 (1949), 305-10; Ethel M. Barke and D.E. Williams, "A Further Study of the Comparative Intelligence of Children in Certain Bilingual and Monolingual Schools in South Wales," The British Journal of Educational Psychology, Vol. VIII (1938), 63; Theodore Andersson, "A New Focus on the Bilingual Child" The Modern Language Journal, Vol. XLIX (1965), 156-60; Chester C. Christian, Jr., "The Acculturation of the Bilingual Child", The Modern Language Journal, Vol. XLIX (1965), 163-63; David T. Hakes, "Psychological Aspects of Bilingualism," The Modern Language Journal, Vol XLIX (1965) 220-27; Mildred V. Boyer, "Poverty and the Mother Tongue," Educational Forum, Vol. XXIX (1965), 290-96.

8. The International Institute of Teacher's College, A Survey of the Public Educational System of Puerto Rico, Columbia University, Teachers College, New York Bureau of Publications (1926). It should be noted that although certain Puerto Rican children enter the school with underdeveloped skills in reading and writing Spanish, their Spanish skills are certainly better developed than their English skills and should be used as learning tools.

9. E.g. It was recognized and specifically referred to in their 1974-75 Budget Estimate to the Bureau of the Budget as support for an approximate $14.5 million dollar budget increase for bilingual education. Moreover, this observation was expressed more than sixty years ago by the United States Immigration Commission with respect to the children of immigrants whose dominant language was other than English. See p. 21, fn.30 Infra.

The ESL Component

It is essential for a Spanish-dominant child to master English. This competence can and must be developed without sacrificing or demeaning the child's dominant language.[10] Accordingly, the ESL component must be designed as a part of the bilingual program and not as a curriculum independent of or unrelated to the other components. The development of a child's Spanish language abilities and his English language abilities should be considered and implemented as mutually supportive and not as conflicting educational processes.

The teaching of English as a second language is usually divided into four skill areas: speaking, listening, reading, and writing. But these divisions are conceptual rather than sequential, so that the ESL program represents an elaborate integration of the four skills into classroom instruction. Study skills, literature, and "body language" are often included. Orientation to the child's English-speaking community, particularly to the school environment, is fundamental.

Moreover, the ESL component should be part of the over-all effort of the bilingual program to promote a child's gaining an awareness of and respect for the differences and similarities between the English speaking culture and his own. Teaching of American social customs, traditions, folklore, history and literature should be incorporated into an ESL component. As pointed out in the section entitled Personnel, infra, teachers who are responsible for teaching a second language must be trained and otherwise equipped for all of these purposes.

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[10] See generally "Proposed Statement of Qualifications and Guidelines For The Preparation and Certification of Teachers of English to Speakers of Other Languages in the United States", presented to the TESOL Convention, Washington, March,1972.

Puerto Rican Culture Is Incorporated In All Aspects Of The Curriculum Program

A bilingual education program must of necessity, reflect the child's cultural heritage.

That a cultural component is an integral part of a bilingual education program is acknowledged in the HEW definition of bilingual education:

> Bilingual Education is the use of two languages, one of which is English, as mediums of instruction for the same pupil population in a well-organized program which encompasses part or all of the curriculum and *includes the study of the history and culture associated with the mother tongue. A complete program develops and maintains the children's self-esteem and a legitimate pride in both cultures.*[11] (emphasis added)

At the Third Annual International Conference on Bilingual-Bicultural Education held almost one week ago on May 15, Chancellor Irving Anker stated:

> Multi-lingual education in New York City is no longer totally the wave of the future. It is a living acknowledgement that New York City is now fully committed to cultural pluralism and hopefully is on the way to putting into actual effect its commitment.[12]

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11. U.S. Dep't of Health, Education, and Welfare, *Programs Under Bilingual Education Act (Title VII, ESEA): Manual For Project Applicants and Grantees* (1971),1.

12. Address by Irving Anker, Chancellor of the New York City Board of Education, Third Annual International Conference on Bilingual-Bicultural Education, May 15, 1974.

Moreover, the New York State Board of Regents in its 1972 Policy Statement on Bilingual Education recognized the necessity for the inclusion of the cultural component.

> A fundamental tenet of bilingual education is that a person living in a society whose language and culture differ from his own must be equipped to participate meaningfully in the mainstream of that society. It should not be necessary for him to sacrifice his rich native language and culture to achieve such participation. Rather, we should utilize available language skills and thought processes to foster intellectual development while developing English language proficiency. The purpose of this position paper is to direct concerted and effective action toward achieving this end.[13]

The defendants have expressly adopted and endorsed this policy of the State Board of Regents. Again, in the words of Chancellor Anker:

> The New York City Board of Education subscribes totally to the view expressed [The Regents Policy Statement] and what's more, we in New York City think that we've been willing to put our money where our mouths are.
>
> Our goal is to make it possible for all children to communicate effectively, articulately, and easily in both the language of their parents

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13. Regents Policy Statement, *op. cit.*, 5.

> and the language of the country in which they now live. That goal involves more than a language facility. It has as its underlying vision the hope that improved communication of people will lead to greater appreciation of people whose backgrounds vary, but whose needs are basically the same as that as the both of us. Bilingual and bicultural education is one of our highest educational and budgetary priorities.[14]

The use of Spanish is a vehicle for the maintenance of culture. Culture is inseparable from the language used to articulate it.[15] The very use of a child's dominant language inherently teaches the child to respect and value that language.[16] It allows him to develop respect and pride in the myriad social and cultural aspects ineluctably related to that language. Strong feelings of self-respect and pride that the child possesses upon his arrival at school should be maintained.

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[14] Address of Irving Anker, op. cit.

[15] Saville and Troike, op. cit., 21-22.

[16] In Puerto Rico, the United States has recognized this by adopting the policy of teaching Puerto Rican children in Spanish, purportedly to encourage cultural autonomy. As the late Senator Robert F. Kennedy, in sponsoring section 4(e) of the Voting Rights Act of 1965 put it:

> In School [the typical educated Puerto Rican] reads, in Spanish, the same textbooks which his fellow citizen on the mainland reads in English. That his schooling takes place in Spanish is not up to him, but is due to the fact that the U.S. Government has chosen to encourage the cultural autonomy of the Commonwealth of Puerto Rico, to make Puerto Rico a showcase for all of Latin America. 111 Cong. Rec. 11060 (1965)

16. (cont.) Of course, Puerto Ricans have been United States citizens since 1917 and, as such, have the right to freely travel to and from New York City. 8 U.S.C. §1402 (1917). For the New York City schools to suppress the use of or fail to nurture a Puerto Rican child's Spanish, while the federal government mandates that that same child receive his education in Spanish before he arrives here is patently irrational as well as pedagogically absurd. These inconsistent policies were recently recognized in the voting area when the electoral process was made bilingual by judicial mandate in New York, Philadelphia and Chicago. See fn. 27 infra.

This positive self-image is supportive of a constructive attitude towards school and learning in general. To destroy or diminish a child's positive self-image, adversely affects his motivation and precludes him from full and effective participation in the educational program.[17]

In addition to the use of Spanish in the schools, a program of instruction must make available to the child culturally relevant instructional materials. These materials would relate to Puerto Rican folklore, artistic expression, literature and history.

But culture includes still more. What school authorities seem to often forget is that culture is acquired by direct, frequent, varied participation and experience in all aspects of the life of a group of people. A very large part of this acquisition occurs outside of the learner's awareness. Culture can only be "taught" or transmitted in the school if special efforts are made to incorporate into the curriculum, the staff and activities as many aspects as possible of the life of the cultural group to which the learner belongs.[18] Bridges must be constructed between the home, the community and the school.[19] Parents must be consulted and their support and involvement sought.[20] Personnel must be aware of the cultural patterns of Hispanic children, and the differences between Hispanic and American cultural modes. Negative stereotypes of members of minority cultures too often govern the attitudes, expectations and values or teacher-child relationships.[21] If conflicts between the two cultures in these areas are not resolved, the child will be unable to function effectively.[22] In sum, the child and the school will be incompatible.[23]

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[17] Saville and Troike, op. cit., 32.

[18] National Puerto Rican Development & Training Institute, Inc., op. cit., 30.

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[19] See Testimony of A. Bruce Gaarder, Chief, Basic Studies Branch, Division of College Programs, Bureau of Educational Personnel Development, U.S. Office of Education. United States Congress. Senate. Bilingual Education. Hearings Before the Special Subcommittee on Bilingual Education of the Committee on Labor and Public Welfare, United States Senate, Ninetieth Congress, First Session, on S. 428, A Bill to Amend the Elementary and Secondary Education Act of 1965 in Order to Provide Assistance to Local Educational Agencies in Establishing Bilingual American Education Programs, and to Provide Certain Other Assistance to Promote Such Programs. Part 1, May 18, 19, 26, 29, and 31, 1967. Printed for the use of the Committee on Labor and Public Welfare. Washington, D.C.: United States Government Printing Office, pp. 51-55:

> Non-English-speaking children come from non-English-speaking homes. The use of the child's mother tongue by some of the teachers and as a school language is necessary if there is to be a strong, mutually reinforcing relationship between the home and the school.

[20] Andersson and Boyer, op. cit., 62.

[21] Robert Rosenthal and Lenore Jacobson, Pygmalion in the Classroom: Teacher Expectation and Pupil's Intellectual Development, (1968).

[22] Saville and Troike, op. cit., 22.

[23] Cardenas and Cardenas. "Theory of Incompatabilities" Today's Education, (Feb. 1972).

III

BILINGUAL EDUCATION HAS RECEIVED RECOGNITION BY DEFENDANTS AND OTHERS AS NECESSARY AND APPROPRIATE FOR EDUCATING CHILDREN SUCH AS PLAINTIFFS

Bilingual Education - An Historical Overview

Bilingual Education is not a new concept for educating children. In the United States, bilingual education has existed at least since the beginning of the nineteenth century. Between 1839 and 1880 German was used as the medium of instruction in many mid-western schools, French in Louisiana schools, and Spanish in New Mexican schools. In the non-public, chiefly parochial schools, German schools flourished throughout the country. Many French schools began in New England and Scandinavian and Dutch schools were established in the Midwest.

With the advent of World War I and the anti-German sentiment which ensued, bilingual schooling substantially atrophied. Legislation was enacted in several states forbidding the use of a language other than English s the medium of instruction.[24] In many states it was taboo o use German at meetings, over the telephone, or on the treets.[25] These tactics affected not only Germans, against

whom they were specifically directed, but were followed by a period during which there was an anti-foreign backlash which affected all foreigners.[26] The legislative efforts to expunge the use of foreign languages were not targeted exclusively to the classroom but pervaded other aspects of life.[27]

The renaissance of bilingual education occurred eleven years ago in Florida's Dade County. The program was designed for Spanish-dominant, as well as Anglo-English dominant children who participated voluntarily. English was the medium of instruction for all pupils for approximately half of each day, and Spanish the medium of instruction for all pupils during the other half. The expectation was that at the end of the sixth

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4 Joshua Fishman, Language Loyalty in America, 238

5 Id.

[26] Id., 249

[27] Literacy tests for voting is a prime example. Section 4(e) of the 1965 Voting Rights Act was specifically enacted to protect Puerto Ricans from voting legislation aimed at discouraging the use of Spanish. See, Katzenbach v. Morgan, 384 U.S. 641 (1966); See also, Yu Cong. Eng v. Trinidad, 271 U.S. 500 (1926) (involving law requiring all business persons in Hawaii to maintain their books in English only); Leibowitz, "English Literacy: Legal Sanction for Discrimination", Revista Juridica de la Universidad de Puerto Rico, 1970, pp. 313, 353, 355. Recently Courts have declared that bilingual elections are mandated by section 4(e) of the 1965 Voting Rights Act. Puerto Rican Organization for Political Action v. Kusper, 490 F.2d 575 (7th C 1973); Torres v. Sachs, 73 Civ. 3921 (S.D.N.Y. Sept. 26, 1973); Arroy Tucker, 73 Civ. 2247 (E.D. Pa. March 25, 1974) in which these courts held that conducting English only elections precluded Spanish speaking Puerto Ricans from casting an effective and meaningful ballot. The same reasoning applies to education.

grade each group of pupils would know the two languages well enough to operate effectively in both. An evaluation of the achievement in language arts and arithmatic showed that the bilingual program was as effective as the regular program in English. The program evaluation states:

> It must be noted here that, in addition to performing as well as the control group in the regular curriculum, the English-speaking pupils were learning a second language and the Spanish-speaking pupils were learning to read and write their native language.[28]

The following year other programs were established by the United Consolidated Independent School District and by the San Antonio Independent School District, both in Texas. Between 1965-67 experimental bilingual programs were implemented in New Mexico, California, Arizona, New Jersey and the Virgin Islands, and on a limited basis in New York City.

The Federal Commitment

The United States Congress formally committed itself to bilingual education in 1967 with the passage of Title VII cf the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. §880b (1968), entitled the Bilingual Education Act:

> In recognition of the special educational needs of the large numbers of children of limited English-speaking ability in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out new and imaginative elementary and secondary school programs designed to meet these special educational needs. For the purposes of this subchapter, "children of limited English-speaking ability" means children who come from environments where the dominant language is other than English.

Bilingual education under the Act means: "The use of two languages,one of which is English, as mediums of instruction." 45 C.F.R. §123.1(b) (1969). The enactment of the Bilingual Education Act, spawned programs throughout the country, and encouraged state legislatures and local municipalities to enact enabling legislation for establishing bilingual educational programs.[29]

The efforts of the federal government to implement more effective ways to educate children dominant in a language other than English arose from the conviction that existing educational programs did not meet the needs of hundreds of thousands of children in the nation's schools.

The Defendants' Agree That Bilingual Education Is Necessary

As this Court pointed out in its April 30, 1974 Memorandum, the defendants stated in their Budget Estimate for

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[28] Andersson and Boyer, *op. cit.*, 18.

[29] See Appendix I.

974-75 that 130,000 students whose dominant language is other han English require bilingual education or they "will fall further ehind each year unless they receive this instruction while they re learning English."[30] Indeed, the defendants further stated in his Budget Estimate that:

> "Both the Community Districts and the Division of High Schools consider [bilingual education] services among our highest priorities if we are to arrest continuing retardation. This increase I am requesting is pitifully small when it is compared with the need of the students and the value to young people." (Emphasis added).

The defendants' unequivocal declaration that bilingual ducation is necessary to avoid academic retardation is a reaffir-ation of prior Board policy. As early as 1965, the Board, in a tatement of Policy entitled "Excellence For the Schools of New ork City" stated that:

> "Bilingualism and biculturalism will be encouraged for all pupils, and particularly Spanish-speaking ones, as an aspect of excellence which will benefit our community and nation in their relationship to a multi-cultured world."[31]

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0 Academic retardation in the New York City schools was observed s far back as 1911 by the United States Immigration Commission hich found a high incidence of such retardation among the children f immigrants. United States Immigration, The Children Of Immigrants n Schools, Vol. 32, 608-609.

1 Statement of Policy of Board of Education of New York City, dopted April 18, 1965, issued April 28, 1965 p. 602.

In July, 1967, Dr. Bernard Donovan, then Superintendent of Schools, testified before the United States House of Representatives General Sub-committee on Education as follows:

> We are dedicated to the bilingual approach to this educational program. Although we stress the importance of full command of the English language, we also believe in the maintenace and strengthening of the child's language skills in that native tongue of the pupil or his parents. Bi-lingual programs can provide superior educational benefits.[32]

Indeed, more than eleven years ago, Dr. Calvin E. Gross, then Superintendent of Schools, urged that "Puerto Rican children and other new arrivals to the city be enabled to develop biculturally and bilinguistically." He stated that he "deplored the melting pot approach in which new arrivals are made over in our own image."[33]

The substance of these statements was reiterated by defendants as recently as May 15, 1975 when Chancellor Irving Anker expressed the defendants' commitment to bilingual education in terms of assisting plaintiff children to

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32. "Testimony given by Dr. Bernard E. Donovan, Superintendent of Schools, New York City, before the House General Sub-committee on Education of the House Committee on Education and Labor on H.R. 9840 and H.R. 10224." (2 page mimeographed reprint; press release #451-66/67; 7/7/1967; N.Y.C. Board of Education).

33. N.Y. Times, May 2, 1963, at 37, Col. 1.

communicate "effectively, articulately, and easily" in both Spanish and English. See pp. 12-13, supra.

However, as the Jenkins Report on Bilingual Education in New York City noted, "These statements made by leaders within the Board were rarely translated into viable policies or mandated as programs in the schools."[34]

New York State's Policy and Findings

On the state level, support for and recognition of the necessity of a bilingual educational approach has been similarly established. The Regents 1972 Statement of Policy set forth their primary goal regarding bilingual education:

> The primary goal of the Regents in their bilingual education program is to provide equal educational opportunity for non-English-speaking children through activities capitalizing on their proficiency in their native language and developing competence in English. The program affirms the importance of English and at the same time recognizes that the native language and culture of a child can play a major role in his education. There is no experimental substitute for the successful learning experiences gained by non-English-speaking children who are permitted and encouraged to learn in their dominant language.[35]

In urging local school districts to go beyond a second language program, the Regents defined the responsibility of a district such as New York City as follows:

> In any case, where there are approximately 10 or more children of limited English-speaking ability who speak the same language and are of approximately the same age and level of educational attainment, every effort should be made to develop a bilingual rather than second language program.[36]

The Fleischmann Commission pinpointed several of the consequences of failing to meet the needs of plaintiffs:

> Given the fact that 94,800 Puerto Rican children out of a total Puerto Rican school population of 250,000 in New York City have significant language difficulties, it is little wonder that, (1) reading and mathematics failure is disproportionately high among Puerto Rican elementary school students; (2) "progressive retardation" measured by comparing

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34. Mary Jenkins, Bilingual Education in New York City (1971), 15.

[35] Regents Statement of Policy, op. cit., 7.

[36] Id., 9.

> junior high school achievement scores is most pronounced in this group and (3) the dropout rate among Puerto Ricans is higher than for any other group: Fifty-three per cent of all Puerto Rican students who were enrolled in the 10th grade in academic high schools in May 1969, had dropped out before two years elapsed--and only 46 per cent of those remaining (a total of only 2.237) were enrolled in the college-bound track.[37]

The success of the existing programs was characterized by the Commission as follows:

> Efforts to overcome the educational disadvantage of the 160,000 students we have identified have been wholly inadequate in the broad sense, though some specific projects have been successful. Since the great majority of language-handicapped children are concentrated in New York City most of the following analysis will focus on the problem as it exists there; however, the size of non-English-speaking population is growing in other areas of the state and the problem there is equally serious.

In concluding, the Commission recommended the bilingual approach:

> The two basic methods used to overcome English-language deficiencies--English as a Second Language and bilingual education--differ in approach, in strengths and weaknesses. An exclusively ESL approach gives the child intensive work in English-language skills while he follows his subjects in English as best he can. This method has the advantage of exposing the child to more English and thus facilitates his acquisition of the language. However, there is a strong possibility that, while he is learning English, the student will fall behind in his other subjects, that knowledge of his own language will not be reinforced and that he will be divorced from any positive feeling about his own culture that he might learn through instruction in his own tongue. Further, English as a second language is a high-cost method. It relies on auxiliary teachers to give small-group instruction. In a school system with large numbers of children with limited English-speaking ability, such as New York City, an army of such teachers would be required to make the language program effective.
>
> The bilingual approach gives the child a more gradual introduction to English, but it permits him to receive instruction during the school day in a language and at a level he can understand. Thus, valuable instruction time is not lost while the student is acquiring English skills, and his chances of losing academic ground while mastering a new language are substantially diminished. Bilingual education also enriches learning by encouraging bilingual literacy and reinforcing cultural identity and pride. A recent Board of Regents position paper advocating the bilingual approach stresses how bilingual education helps the students maintain his own background while learning to adjust to the new culture: "It should not be necessary for [the student] to sacrifice his own rich native language and culture

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[37] The Fleischmann Commission Report, op. cit., Vol. 2, 6.36, 6.38.

to achieve such participation," states the paper.

Furthermore, bilingual education gives the child who cannot yet read an opportunity to learn to break written codes faster and more effectively by allowing him to associate symbols with the language he has been hearing since birth. Finally, bilingual education is less costly than ESL because it relies, basically, on providing additional training for classroom teachers rather than hiring auxiliary teachers and services.

The Commission is convinced that bilingual education, with a strong English-instruction component, is the better method for reaching large numbers of children with limited English-speaking ability. We therefore recommend that districts throughout the state use this approach for all children who have been assessed as having limited English-speaking ability.[38]

6.48 - 6.49

PROGRAMS

Plaintiffs have set forth the four essential components of a bilingual education program.[39] Although these components must be present in any bilingual program, they may be incorporated into different models. No one particular model is appropriate for all schools and communities. Flexibility in the program design is inevitable if the different needs and characteristics of different children and communities are to be met.

Plaintiffs have annexed for the Court's consideration, as Appendix II, various models and program descriptions, all of which contain the four essential components.

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[39] See pp. 3-16, supra.

V

PERSONNEL

Introduction

It is axiomatic that the success of any instructional rogram is largely dependent on the effectiveness of the personnel ntrusted with its execution. In that light, we now turn o a delineation of the roles and functions of personnel, the esign of their training, and the process of their recruitment.

It should be made clear at the outset that despite he separate presentation of the various personnel roles, an ntegrated and coherent instruction program is at all times mplied. Moreover, competency in a given field must be judged y experienced practitioners in the field, and not necessarily n the basis of written examinations or course work. All nimum job requirements must be job related. For this reason, he following presentation will deal with the positions described n terms of functions and roles and not in terms of current icenses.

The role of a bilingual teacher of a subject area, or example, is considered here as a position in an instructional rogram, and it is not relevant whether the person who fills he role is licensed to fill it. A teacher who is bilingual nd possesses a license to teach Spanish, should be allowed to each mathematics to Spanish-speaking children if he can demon-trate competence in teaching mathematics bilingually, and if he has an adequate background in mathematics. Thus, in order to obviate any delay on personnel recruitment a teacher unlicensed to fill a position for which he demonstrates competence should be allowed to teach.

II Personnel Qualifications, Roles, Functions

A. Teachers in Bilingual Education Generally

The teachers are responsible for planning and carrying out instruction process. They are the focal point of the schooling process. Their school activities should be coordinated and integrated with the work of paraprofessionals, administrators, supportive personnel, and other teachers. They are the primary vehicles for the elemental components of bilingual education, and as required of all teachers, they must be able to develop a motivating rapport with their students. Teachers involved in bilingual education should be sensitive to the needs of Spanish-dominant children.

1. Teachers in Elementary School Bilingual Programs

Teachers in elementary schools should be well-grounded in child psychology and child development theory. They should be familiar with the processes and goals of bilingual education. Because of the elaborate network of supportive services available to the child, the teacher must assist his pupils to take advantage of all those services. But the core of his professional commitment in his classroom activity: he must teach and bring his students to learn.

2. Teachers in Secondary School Bilingual Programs

Teachers in secondary schools (i.e., high schools, junior high schools, and intermediate schools) are usually considered teaching specialists in a particular content area, and bilingual education does not excuse them from that competency. To teach a particular subject or subjects, they should know enough about that subject to provide intellectual growth for the most advanced students as well as the average ones. As is true of elementary school teachers, secondary school teachers must be able to motivate their students, and to stimulate their thought and talent.

B. Specific Instructional Personnel

1. Bilingual Teacher of subject area

The Bilingual teachers in subject areas are responsible for carrying on the core activity of the school program: instructing the students in the various knowledge-based content areas. Mathematics, science, social studies, art, music, industrial arts, physical education, and all their divisions are presented by bilingual teachers of subject areas.

They must be able to design their curriculum to reflect the general goals of a bilingual program. For example, as part of the advanced skills reading program, reading in subject areas should take place in both languages.

2. Teacher of English as a second language

The teacher of English as a second language (TESL) is responsible for development of oral skills in English, including all aspects of speaking and listening. The TESL is also responsible for the transfer of reading skills from those developed in Spanish. Moreover, the TESL is responsible for the writing program in English.

3. Teacher of Spanish as a Native Language

The teacher of Spanish as a native language (TESNL) is responsible for teaching Spanish language art skills in initial reading, remedial reading, and later, in advanced Spanish. Instruction in Spanish language arts, of course, takes place in Spanish. Spanish, Latin American, and Puerto Rican literature and folklore is taught by the TSNL, in addition to translated English and American literature. Spanish grammar and usage is taught by the TSNL, partly to aid in the teaching of English through contrastive analysis in the higher grades.

4. Teacher of Spanish as a second language

The teacher of Spanish as a second language (TSSL) offers Spanish as a second language to the English-dominant children who may be participating in a bilingual program. Not all bilingual programs will have English-dominant speakers, but for those schools which opt for this mixed model, TSSL is essential. TSSL is best described as the reverse of TESL.

C. Administrative Personnel in Bilingual Education

Administrators and supervisors are generally responsible for assignment, coverage, replacement and evaluation of teachers, for the child's well being while in the school, and for the maintenance of the physical plant. Over and above these general administrative duties, the administrator and supervisor in those schools in which there are bilingual programs is responsible for overseeing the formulation, implementation and evaluation of the bilingual programs.

D. Supportive Personnel in Bilingual Education

1. Classroom paraprofessionals

Classroom paraprofessionals work under the teacher and the school administrative staff. The paraprofessional is not to take the place of the teacher or act as an interpreter

of lessons for a monolingual teacher. Effective teaching requires direct communication with the pupil. The teacher is trained to apply a certain expertire and knowledge basic to the development of cognitive and other areas of pupil growth. The teacher is cognizant of basic child psychology and peer-relations social processes. In all of these areas the paraprofessional is untrained and, therefore, can only perform functions ancillary to instruction. However, paraprofessionals can serve as models with whom students can identify, and they can provide a link between the home and the school.

2. Bilingual Guidance Counselor

The bilingual guidance counselor should assist in the initial screening of those Spanish-dominant children with English language deficiency. He must be sensitive to cultural behavior patterns of Hispanic children. In addition to holding individual and family group counseling, he must interpret culture-bound behavior at staff meetings and parent workshops. The counselor must coordinate the efforts of all resources available in the school and the community needed to assist Hispanic school children, their parents, and the school staff in dealing with problems affecting the child's school performance.

3. Bilingual attendance teacher

Considering the disproportionately high absentee rate of Hispanic school children, the role of the bilingual attendance teacher assumes special importance. The bilingual attendance teacher supervises the taking of daily attendance at the school. He interviews parents or guardians of absentess concerning reasons for absence, interpreting legal parental responsibilities for the family. He assists other attendance teachers in understanding the background, needs, and strengths of Puerto Rican children. He attends parents association meetings and he orients Spanish-speaking parents to the school and the school system. He promotes the use of social service agencies to Spanish-speaking families. Finally, he serves as an interpreter for bureau of attendance staff.

4. Bilingual teacher in school and community relations

The bilingual teacher in school and community relations assists in the registration, class placement, transfers, and promotion of students. He aids in organizing pupils into clubs and other organizations and in organizing school assemblies. He assists the guidance team and helps to discover gifted or handicapped students and to prepare appropriate programs for them. He helps orient new staff. With respect to parents, he organizes workshops and other activities to orient parents to the school and to provide opportunities for parental service and growth. He serves as a resource person to the parents association and maintains contact with community agencies to promote mutual cooperation between the community and the school. He makes home visits to help with child guidance and assists the guidance team in making referrals of pupils and parents to City agencies.

5. Bilingual Community paraprofessionals

The community paraprofessional assists in the coordination of the school and home. He works under the supervision of school administrators, and complements the work of the bilingual teacher in school and community relations and the guidance staff. The community paraprofessional helps the school orient parents to school procedures and facilities. The paraprofessional aids parents who come to the school and encourages them to consult school personnel about the performance of their children. He assists the parents association with enrollment in the association and encourages the parents to take part actively. He helps the family find help from various service agencies in the community and City.

6. Bilingual Curriculum specialist

The curriculum specialist assists other staff members in the development and adaptation of materials for bilingual programs. He assists teachers in diagnosing and prescribing developmental and remedial activities for students, and helps to evaluate their progress. He arranges workshops for teache[illegible] and classroom paraprofessionals to improve instructional skills. He aids in the development of innovative instruction. He provid and develops language-related materials, particularly in the practical areas of English and Spanish as second languages.

provides and develops reading materials at all levels f reading development in both languages. He helps to organize ctivities that integrate Spanish-dominant and English-dominant upils. He assists librarians to coordinate their service ith classroom instruction. He keeps current with available aterials suitable for bilingual programs, including cultural ckground materials.

7. Librarian and library assistants

The library service personnel in a bilingual program e responsible for providing reading materials in both languages r individual pupil activity and for class assignments. They st keep current with published materials that are particularly ppropriate for students in bilingual education. They carry on tivational and instructional activities for students to encourag hem to read and study. They provide suitable environments which children may spend time reading. They provide help nd materials for parents who wish to help their children in heir reading. They assist the school in displays and assembly ctivities, particularly those related to cultural figures and heir celebrated days.

8. School aide

School aides assist the school faculty with clerical d manual tasks such as mimeograph and other duplicator work, chool newsletter announcements, and the like. They help to

organize the pupils in the school and check on stragglers or students with passes out of class. They aid school secretaries and attendance officers with their work and they receive parents at the school and direct them to proper offices and rooms. They help at entrances and exits of the school to insure that students enter and leave at the proper times. They are responsible for a wide variety of duties and activities delegated by the school administration.

9. School psychologists, psychiatrist, nurse, and speech therapist

Certain technical specialists, such as psychologists, psychiatrists, nurses, and speech therapists have professional duties not derived from the school experience as such, but are necessary to help children function within schools. They have their own professional qualifications which need not be described here.

III Personnel Training

A. Instructional Personnel

There are a number of different kinds of training programs relevant to personnel in bilingual education. In-service training, practice teaching, and course work are the main divisions. They are not mutually exclusive by any means, and are ideally complementary.

1. In-service training usually is given at the school for school personnel by consultants, college professors, or master

teachers from the school or district office or Board of Education. There are at least three approaches to in-service training.

a. Pre-service workshops, which are not, strictly speaking, in service, nevertheless resemble in-service programs in content and manner of presentation. They are given to specially prepare personnel before they begin working in the program.

b. In-service workshops are given while the personnel are on the job, and they help to solve problems as they arise, as well as introduce teachers and other personnel to resources and ideas. In addition to workshops, which are usually formal gatherings, various personnel (e.g. master teachers) may provide regular training to personnel while they are on the job. In some bilingual programs there are presently full-time bilingual resource teachers who are assigned to a small team of teachers as master teachers and curriculum resource persons.

c. Finally, summer programs are often a part of in-service training, and it may take various forms, including, the workshop described above or course work sponsored by a college or university.

2. Practice Teaching is ordinarily required for any type of competency certification in education. It is most often provided in conjunction with a degree-granting institution as an

extension of course work. Practice teaching is always done under the supervision of experienced teachers.

The focus of in-service training and practice teaching should be as practical as possible. These programs should include the following practical areas:

(i) Planning and instruction in subject areas, if applicable, or to elementary school children or to pupils in special education.

(ii) Basic language instruction techniques, including some knowledge of the teaching of reading for either initial literacy or remedial reading.

(iii) Use of audio-visual materials and other curriculum-related materials.

(iv) Techniques and planning for the integration of instruction-supportive personnel in the program, particularly of paraprofessionals and classroom aides.

(v) Orientation to the services available to the pupils from the school and various educational or other governmental and private agencies.

(vi) Conversational Spanish and English, reading and writing of Spanish and English, as determined by the needs of the individual teacher.

(vii) Orientation to the school, the district, the system, teacher benefits, and other personal matters relevant to teachers.

3. Course work is prescribed most often by a degree-granting institution or by a certifying agency. It stresses educational foundations, relevant social science investigations, teaching methods, and subject studies. Background in the following areas is recommended:

(i) Hispanic culture, folklore, literature, and customs.

(ii) Advanced skills in Spanish, including regional variations and para-linguistics ("body Language") relevant to students.

(iii) Language structure and applied linguistics as it relates to language instruction in bilingual education, contrastive linguistics for English and Spanish, and advanced skills in English.

(iv) Methods of teaching bilingually, with a specialization in the teacher's subject area.

(v) Human relations, cross-cultural perception, human behavior in cross-cultural settings, tensions and problems in growing up and living in a culture different from the home culture.

B. Personnel Training - non-Instructional, Supportive Personnel

1. Guidance Counselor

The most important person in supportive services is the bilingual guidance counselor. The bilingual guidance counselor must be experienced and well-prepared academically before assuming his duties in the bilingual program. The experience may come from any of several of a variety of social agencies, including schools. The schools can prepare counselors through in-service courses and supervised training.

Counselors work more intimately at times with pupils than even their teachers, and counselors must be prepared to deal with pupils on their own terms as individuals of another cultural background. Deviant behavior in one culture may be quite acceptable within another, and a guidance counselor who reprimands pupils for behavior received from his home culture is likely to do more harm than good. Because of this important issue, it is recommended that counseling applicants be carefully screened by attitude-measuring devices that are specifically culture-based.

2. Classroom Paraprofessionals

Classroom Paraprofessionals should be trained to:

(i) Assist in the instruction in subject areas;

(ii) Assist in offering language instruction to small groups of children;

(iii) Use audio-visual materials and other curriculum-related materials;

(iv) Assist in the instruction of conversational English and Spanish;

(v) Assist in the instruction of reading and writing Spanish and English.

Community paraprofessionals and audio-visual paraprofessionals do not receive training in assisting in the instruction of children. The training presently available for these personnel is adequate for the duties they respectively perform.

3. Adminiscrators and Supervisors

Administrators and supervisors must have a thorough knowledge of and familiarity with the basic components of a bilingual education program. In addition, they should possess the same administrative qualifications as administrators in non-bilingual program. Where possible, they should receive instruction in conversational Spanish and Hispanic culture.

4. School Psychologists

Where possible, school psychologists and psychiatrists, should receive instruction in conversational Spanish, and Hispanic culture.

5. Bilingual Teachers in School and Community Relations – Bilingual Attendance Teachers

There are current well-developed programs for bilingual teachers in school and community relations and bilingual attendance teachers. There is no need to develop new schemes here for their training. Better methods of recruitment, mandatory assignment and correct utilization of these personnel, however, must be developed.

6. School aides, school secretaries

Most school secretaries and school aides bring adequate preparation to their work and are engaged in experiential on-the-job training, so that new training programs may not be necessary. However, for others, special pre-service training may be appropriate. The bilingual school secretary should be entrusted with translation and interpretati for the school and parents.

7. Curriculum Specialists

Curriculum specialists should have the training required of a bilingual teacher, with additional background in school curriculum, the preparation and adaptation of materials for bilingual programs, organizing meetings, workshops, school or district assemblies.

8. Librarians, Speech Therapists, Nurses

Other well-trained supportive personnel, including librarians and library assistants, speech improvement specialis and school nurses should be bilingual, at least in their special areas.

C. Special Education Personnel

All special education services available to English speaking pupils should be made available to Spanish-speaking pupils in an easily accessible fashion.

Special education is understood to include all the following areas.

1. College-bound programs
2. Gifted pupil programs, including competitive admission schools
3. Handicapped pupil programs (emotionally, mentally or physically or doubled-handicapped)
4. Health conservation classes
5. Homebound pupil programs
6. Institutionalized pupil programs
7. Junior guidance programs
8. Kindergarten and pre-kindergarten programs
9. Remedial programs (including reading)
10. Special progress programs
11. Speech impediment programs
12. "400" and "700" school programs for behavior problem children
13. Other special education programs not specifically included here

Personnel delivering these special education programs should be bilingual. If an entire program, class or group is Spanish speaking, then our prescription for bilingual education should follow.

IV Personnel Recruitment

As a first step to recruit bilingual personnel, the Board should adopt a program to disseminate information throughout

the City and State of New York and other areas regarding the availability of positions for bilingual personnel. The media, both English and Spanish, should be used extensively to attract persons. Examinations can be advertised and given in various cities with Hispanic populations.

The aid of universities must be sought in order to recruit bilingual teachers. Every effort, including the use of personnel recruitment teams, should be made to inform college students of available positions and the advantages of careers in education. As the demand increases for bilingual teachers and other personnel, it is expected that college programs will be expanded to increase the number of persons equipped to fill job positions.

Moreover, at present, there is a pool of potential candidates for bilingual education within the school system. There are currently trained personnel working in non-bilingual programs. There are numerous students in teacher-training programs who are bilingual. Many former teachers from foreign countries and Puerto Rico are undergoing special language preparation that will enable them to assume teaching roles again.

Beyond the pool of potential candidates currently undergoing training or who are on the job, there are persons wihtin the field of education who are likely candidates for re-training. There are instructional, instruction-supportive, administrative, and special education personnel who are currentl qualified in certain areas who lack only a language requirement, certain course work, or in-service training to qualify for a position in bilingual education. In the same vein, there may be bilingual or bilingual-bicultural teachers outside the City or outside the public school system (college, private schools, etc.) who qualify for position in bilingual education programs but lack certain academic or practical preparation. These persons can be retrained if they can be motivated to enter the field of bilingual education.

Vertical re-training is also a potential source of personnel. Bilingual teachers in school and community relations can become bilingual guidance counselors. There are paraprofessionals in programs sponsored by various groups and organizations which are designed to train them to become teachers in bilingual education. Bilingual teachers often enroll in advanced degree programs so that they may become administrators in bilingual education. Comprehensive re-training must be encouraged and developed by the Board of Education.

A significant core of the personnel needed for implementing programs in bilingual education should come from the Spanish-speaking communities. Where necessary, well-coordinated and adequately financed programs should be implemented to prepare the current school generation for careers in bilingual education, particularly with the use of high school equivalency programs. With a network of Spanish-speaking programs, the unemployed may hopefully be trained to join the ranks of paraprofessionals with the

opportunity for further career advancement.

Spanish speaking high school students should be informed of the advantages of careers in education. With an uncommonly large proportion of Puerto Rican students enrolled in vocation high schools, training programs can be implemented in those schools with paraprofessional certificates being issued with diplomas or high school certificates. The same can be done in academic and special high schools so that well-prepared paraprofessionals may be available in various capacities. College students make excellent paraprofessions and can be beneficial to a program when their course of studies supplements the regular program. There are currently two year programs in several colleges leading to minor degrees in education. Persons in these programs might be employed to work as paraprofessionals while they complete their college studies. This exposure to bilingual education may serve as an impetus to encourage these students to enter the ranks of bilingual educators.

VI

PUPIL ASSESSMENT

Initial Screening

An effective procedure must be developed to identify and evaluate Hispanic school children with English language deficiency as these children enter the school system. At present, the only method defendants use to determine an Hispanic child's English language abilities is the use of categories 1, 2 and 3. Pupil placement into one of these three categories is based solely on the limited observation of the child by the homeroom teacher. This procedure is, of course, non-standardized. Teachers are instructed to evaluate the child's English speaking ability only. A child's language classification is not reflected in his school record, according to defendants, precluding the schools from determining a child's progress. Presently, there is no attempt to assess the Hispanic child's ability to read, write or orally comprehend English and no effort is made to assess his Spanish language abilities.

The defendants must implement a comprehensive screening procedure which should include oral interviews in Spanish and English by bilingual personnel, and appropriate and standardized tests designed to assess the child's reading

and writing abilities in Spanish and English. Such assessment is an on-going process and must include those children who have been in the system for any period and for whom no such assessment has been conducted.

Achievement Tests

Since most of the standardized instruments presently in use in the schools are in English only, they are inappropriate for Spanish-dominant students. As a result, their knowledge and skills in subject areas (i.e., math, science) are never ascertained. Although these students should not be expected to participate in the regular testing program of the school, achievement tests must be designed which are appropriate for them. Such tests are not only crucial in determining progress, but are valuable instruments for determining needs. Without these tests, Hispanic children can in no way effectively participate in the educational program: any accurate and objective assessment of their achievements and needs must await their attaining proficiency in English. That defendants have not developed and implemented appropriate tests for measuring the achievement and defining the needs of the Hispanic child reflects a less than total commitment in their offering appropriate instructional programs for him.

Pupil Records

Effective pupil placement must include an examination of the child's prior school records. Defendants must take all necessary steps to obtain the school records of all Spanish-dominant children whose prior schooling took place outside of New York City, including Puerto Rico and Hispanic countries. These records plus all other data relating to the child's schooling must be maintained in an orderly and standardized manner, and must be readily retrievable.

VII

IMPLEMENTATION

A comprehensive plan must be designed to rectify the plaintiffs English language deficiency and to assure that Spanish-dominant students effectively participate in the New York City school system. Implementation of that plan shall be the responsibility of the Board of Education.

The inclusion of an implementation timetable is necessary, setting forth the deadlines for the implementation of the various components of the plan. An implementation committee which shall monitor the compliance with the implementation of the plan is also required.[40]

The defendants shall prepare comprehensive procedures and a detailed organizational system designed for the plan's implementation. These procedures and the organizational plan and any documents or writings relating to them, shall be submitted to the Court for approval, to plaintiffs' attorneys and to the implementation committee prior to dissemination. These procedures and the organizational plan shall include:

1. Definitions of roles and mechanisms for the coordination of the various divisions of the Board of Education which have responsibility for delivering services critical to the effective implementation

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[40] See pp. 57-60 *infra*.

of the plan, e.g., recruitment and training, curriculum development, the high schools, student personnel services, special education research and test development, etc.

2. Guidelines for programs to be submitted to the Board of Education by local school boards and the Division of High Schools for the implementation of bilingual education programs.
3. Timetables for implementation on the Board, community school district and local school levels.
4. Definition of internal procedures for accountability (personnel, fiscal) and evaluation (program, on-site visits, pupil assessment).
5. Mechanisms for reporting, including the retrieving, compiling and evaluation of program data.

The implementation of the plan would involve three levels: the Board of Education, the community school district (and the Division of High Schools), and the local school.

On the district level, community school boards must be mandated to design district-wide programs which meet the requirements set forth in the guidelines issued by the Board of Education. Guidelines should include at least the following:

1. The nature of the pupils and the types of schools to be involved in bilingual education programs.
2. A system for documenting and assuring that schools within the district are implementing bilingual education programs.
3. Personnel recruitment systems for staffing bilingual projects.
4. Staff training programs for potential and in-service personnel involved in the district program.
5. Curriculum development and distribution mechanisms for projects in the district.
6. District-wide procedures for testing and evaluation.
7. Methods for implementing parent orientation programs.
8. Mechanisms for involving parents in the program's design.
9. Methods for the creation of magnet schools or programs for districts with schools containing fewer than twenty Spanish dominant children in a particular grade or grades.

To provide for the expeditious implementation of the plan, districts should be asked to identify priority schools. These schools would be determined, in part, on the basis of information elicited from the survey now in progress. For school year 1974-75, districts should be required to implement projects in these priority schools. The district-wide program or the implementation of bilingual education programs in all schools in the district with category I and II children should be implemented in school year 1975-76.

The following timetable attempts to place many elements of the plan in perspective.

TIME SCHEDULE

DEVELOPMENT PHASE	Summer 1974	9/74-1/75	2/75-6/75	Summer 1975	9/75-1/76	2/76-6/76
Name Compliance Committee	X					
Finalize Plan	X					
Articulate Systems for Central Board Implementation and Guidelines to Districts	X					
Complete Survey and Analyze Results	X					
ON-GOING						
Provide Technical Assistance to Districts	X	X	X	X	X	X
Monitor Plan, Programs and Projects	X	X	X	X	X	X
Implement Staff Recruitment Systems	X	X	X	X	X	X
Implement Personnel Training Systems	X	X	X	X	X	X
Design Research Projects	X	X	X	X	X	X
Develop Field Test Assessment Instruments	X	X	X	X	X	X
Design and Disseminate Curriculum and Materials	X	X	X	X	X	X
PHASE I						
Identify Priority Schools	X					
Implement Projects in Priority Schools		X				
Develop District-wide Program	X	X				
Provide Parent and Community Orientation and Involvement	X	X	X	X	X	X
PHASE II						
Implement District-wide Program				X	X	
Pre-Test Pupils					X	
Post-Test Pupils						X

VIII

MONITORING IMPLEMENTATION

Responsibility for the implementation of any ourt ordered plan regarding the delivery of educational ervices to plaintiffs rests with the Board of Education. In order to insure that implementation takes place in ccordance with the terms and spirit of a Court Decree, his Court should retain jurisdiction over this litigation ntil full implementation is achieved. Compliance by defendants ay be ascertained by the Court through the use of, among ther things, periodic written reports, on-site inspections, nd the receipt of grievances. Additionally, a committee should e appointed by the Court to oversee the administration of ny compliance procedures adopted by the Court (hereinafter eferred to as "the Committee"). There is ample precedent or appointing such a Committee in cases involving school nd employment discrimination.[41]

As part of its responsibility, the Committee shall onsult with the parties and the Court regarding monitoring procedures. Once these procedures are established, the Committee must review the Board of Education's progress in implementation. In addition to furnishing plaintiffs' counsel and the Court with progress reports defendants should provide reports to the Committee. The Committee should be empowered to require any additional reports or investigations relating to the scope of its mandate. Access by any Committee member to all records and other data must be insured in order that the accuracy of the progress reports may be determined and, in order that the Committee may effectively oversee implementation. Supervision of the dissemination of pertinent information to school personnel and community members should also be part of the Committee's responsibility. Moreover, the Committee shall seek, as far as possible, to resolve without resort to the Court any problems which may arise in the effectuation of the Decree.

The Court should have the benefit of periodic Committee input so as to enable the Court to become fully familiar with the progress of implementation. This input may take the form of meetings and/or reports.

The membership of the Committee may be comprised of representatives of plaintiffs and the Board of Education as well as outside persons whose names may be suggested to the Court by both parties for the Court's selection.[42]

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[41] Singleton v. Jackson Municipal Separate School Dist., 419 211, 1217, n.2 (5th Cir. 1969), rev'd. on other grounds sub. nom., arter v. West Feliciana Parish School Bd., 396 U.S. 290 (1970), nforcing sub. nom., United States v. Hinds County School Bd., 23 F.2d 1264 (5th Cir. 1969); Ellis v. Board of Public Instruction, 23 F.2d 203, 206 n.3 (5th Cir. 1970) (establishing committees in chool discrimination cases). United States v. United States teel Corp., 6 E.P.D. 6380, 6388 (N.D. Ala. 1973), 5 E.P.D. 7814, 815-16 (establishing Committees in employment discrimination ases). United States v. Jefferson County Bd. of Education, 372 .2d 836 (5th Cir. 1966), aff'd. en banc, 380 F.2d 385, cert. enied sub. nom., Caddo Parish School Bd. v. United States, 389 .S. 840 (1967); United States v. Hinds County School Bd., 433 .2d 611 (5th Cir. 1970); Sloan v. Tenth School Dist. of Wilson ounty, 433 F.2d 587 (6th Cir. 1970). (Establishing reporting rocedures in the context of appointing a Committee).

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[42] It is submitted that there are many persons in New York City who are experienced in the field of bilingual education upon whom the parties could agree, such as the members of the New York City Commission on Bilingual Education, who are presently serving in an advisory capacity to the Board of Education.

CONCLUSION

The foregoing constitutes a statement and description of the educational programs plaintiffs deem necessary and appropriate to rectify their English language deficiency in order to open the instructional program to them.

Dated: May 20, 1974
New York, New York

Respectfully submitted,

Herbert Teitelbaum

CESAR A. PERALES
HERBERT TEITELBAUM
RICHARD J. HILLER
PUERTO RICAN LEGAL DEFENSE
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ATTORNEYS FOR PLAINTIFFS

C. Complaint in *Rios* v. *Read*, C.A. No. 75 Civ. ____, S.D.N.Y., filed February 28, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ROSA MARIA RIOS, individually and on behalf of her children JOSE RIOS, JORGE ATANACIO and ORLANDO ATANACIO,

HECTOR PEREZ-MARTIN, individually and on behalf of his children ELIZABETH PEREZ, HECTOR PEREZ and NELSON PEREZ,

RUDDY VEGA, individually and on behalf of his children NORMAN VEGA, ALIDA VEGA, and SIDNEY RUDDY VEGA,

DIEGO COLON and CARMEN COLON-TORRES, individually and on behalf of their grandchildren, NOELIA COLON, RAUL COLON, MARITZA COLON, ISMAEL COLON, and SONIA NOEMI COLON,

MARIA DIAZ, individually and on behalf of her children MANUEL ANGEL DIAZ, YVETTE DIAZ, and KEVIN DIAZ,

EPIFANIA RODRIGUEZ, individually and on behalf of her children JOSE LUIS PAGAN, and DAVID PAGAN,

LA UNION HISPANICA DE SUFFOLK COUNTY, INC., on behalf of themselves and all other persons similarly situated.

Plaintiffs,

-against-

HENRY P. READ, as Superintendent of schools for the Patchogue-Medford School District, ALBERT A. BENINCASA, as President of the Board of Education for the Patchogue-Medford School District, and JEROME BOTWINICK, ALFRED J. CHIUCHIOLO, PHILLIP C. LIGUORI, SR., GEORGE A. MASON, JR., CLAIRE MEYER, MICHAEL MONTANA, JR., as members of the Board of Education of the Patchogue-Medford School District,

Defendants.

75 CIV.

COMPLAINT

CLASS ACTION

PRELIMINARY STATEMENT

1. This action is brought on behalf of Puerto Rican and other Hispanic school children to redress and enjoin defendant school officials' violations of plaintiffs' right to an equal educational opportunity as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Title VI of the Civil Rights Act of 1964. Defendant school officials fail to provide plaintiff children, who have English language deficiencies, with programs, curricula, and personnel necessary to ensure their equal and effective participation in the educational process. As a result of defendant school officials' unlawful practices, plaintiff children are discriminated against on the basis of their ethnicity and national origin.

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C. §1343 (3) and (4) in that this is an action to secure equitable relief under 42 U.S.C. §1983. Declaratory relief is authorized by 28 U.S.C. §§2201-2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments.

PLAINTIFFS

3. The individual plaintiffs are Puerto Rican public school children and their parents who are their representatives. They are residents of the towns of Patchogue and Medford in Suffolk County, New York. Each child attends a public school in the Patchogue-Medford School District. Linguistically, these children are Spanish dominant, as Spanish is the language of their homes. They all have English language deficiencies and thereby are prevented from equally and effectively participating in the English only educational program of the schools which they attend.

None of the children receive effective and appropriate programs to ensure such equal and effective participation. Each child is educationally deprived and needs special educational assistance.

4. ROSA MARIA RIOS, and her children, JOSE RIOS, age nine (9), JORGE ATANACIO, age thirteen (13), and ORLANDO ATANACIO, age fourteen (14), reside in Patchogue. JOSE attends the Medford Avenue School in the Patchogue-Medford School District. JORGE and ORLANDO attend the South Ocean Junior High School in the Patchogue-Medford School District. No effective program is offered to JORGE or ORLANDO to teach them in a language they understand so as to ensure their equal and effective participation in the educational program and to teach them English. JOSE received one and one-half hours a week of instruction in English as a second language when he was seven years old, but no effective program has been offered him since that time to ensure his equal and effective participation in the educational program, and to teach him English. JOSE, JORGE and ORLANDO, have all been left back at least once.

5. HECTOR PEREZ-MARTIN and his children ELIZABETH PEREZ, age ten (10), HECTOR PEREZ, age twelve (12), and NELSON PEREZ, age fourteen (14), reside in Patchogue. ELIZABETH attends the Medford Avenue School in the Patchogue-Medford School District. HECTOR and NELSON attend the South Ocean Junior high school in the Patchogue-Medford School District. No effective program is offered to HECTOR and NELSON to teach them in a language they understand so as to ensure their equal and effective participatio in the educational program and to teach them English. ELIZABETH receives special language instruction for one and one-half hours of each school day, but such instruction is inadequate to ensure her equal and effective participation in the educational program, and to teach her English.

6. RUDDY VEGA and his children NORMAN VEGA, age fourteen (14), ALIDA VEGA, age twelve (12), SIDNEY RUDDY VEGA, age fifteen (15), all reside in Medford. NORMAN, ALIDA, and SIDNEY RUDDY attend the Oregon school in the Patchogue-Medford School District where SIDNEY RUDDY was placed one grade lower than that appropriate for his age level when he entered the school system in September, 1973. NORMAN, ALIDA and SIDNEY RUDDY receive spec group instruction two days a week, but such instruction is inadequate to ensure their equal and effective participation in the educational program, and to teach them English.

7. DIEGO COLON and CARMEN COLON-TORRES and their grandchildren NOELIA COLON, age thirteen (13), RAUL COLON, age twelve (12), MARITZA COLON, age eleven (11), ISMAEL COLON, age six (6), and SONIA NOEMI COLON, age five (5), all reside in Patchogue. NOELIA attends the Middle junior high school in the Patchogue-Medford School District. RAUL, MARITZA, ISMAEL, and SONIA NOEMI attend the Bay Avenue school in the Patchogue-Medford School District. No effective program is offered to these children to teach them in a language they understand so as to ensure their equal and effective participation in the educational program, and to teach them English.

8. MARIA DIAZ and her children MANUEL ANGEL DIAZ, age ten (10), YVETTE DIAZ, age eight (8), and KEVIN DIAZ, age five (5) reside in Patchogue. MANUEL ANGEL, YVETTE and KEVIN attend the Bay Avenue school in the Patchogue-Medford School District. MANUEL ANGEL, who was left back in the first grade, receives special group instruction in mathematics two hours a week, but no effective program is offered to him or YVETTE and KEVIN to teach them in a language they understand so as to ensure their equal and effective participation in the educational program, and to teach them English.

9. EPIFANIA RODRIGUEZ, and her children JOSE LUIS PAGAN, age seven (7), and DAVID PAGAN, age five (5) reside in Patchogue. JOSE LUIS and DAVID attend the River Avenue school in the Patchogue-Medford School District. JOSE LUIS and DAVID receive special group instruction for one hour each school day, but such instruction is inadequate to ensure their equal and effective participation in the educational program, and to teach them English.

10. LA UNION HISPANICA DE SUFFOLK COUNTY, INC. (hereinafter "LA UNION") is a non-profit corporation dedicated to improving the legal, social, political and educational status of its Spanish-surnamed members in Suffolk County. Accordingly, LA UNION is dedicated to developing the intellectual and creative capacity of the Puerto Rican and other Hispanic population residing in Suffolk County, many of whom are members of LA UNION and number among plaintiffs and their class. In that connection, it seeks to improve the educational circumstances of Puerto Rican and other Hispanic students attending the Patchogue-Medford School District.

DEFENDANTS

11. HENRY P. READ is the Superintendent of schools for the Patchogue-Medford School District in Suffolk County, and as such he is the chief administrative officer and the chief instructional officer of the Board of Education and the School District. He acts subject to the policies of the Board. He is responsible for the execution of all actions of the Board, the administration and operation of the public school system, and the supervision of all instructional materials.

12. ALBERT A. BENINCASA is the president and JEROME BOTWINICK, ALFRED J. CHIUCHIOLO, PHILLIP C. LIGUORI, SR.,

GEORGE A. MASON, JR., CLAIRE MEYER, MICHAEL MONTANA, JR., are members of the Board of Education for the Patchogue-Medford School District in Suffolk County. The Board of Education is responsible for operating the Patchogue-Medford School District, and has the power to promulgate and enforce any and all policies for the Patchogue-Medford School District.

13. Defendants are sued in their individual and official capacities.

CLASS ACTION ALLEGATIONS

14. The named plaintiffs bring this action on their own behalf and on behalf of all others similarly situated pursuant to Rule 23(a) and Rule 23(b)(1)(A) and (2) of the Federal Rules of Civil Procedure. The class is comprised of all Puerto Rican and other Hispanic children who attend the public schools of the Patchogue-Medford School District who by reason of their English language deficiencies are prevented from equally and effectively participating in the learning process, and who receive either no programs to ensure such participation or insufficient, inappropriate or inadequate programs. Plaintiffs and their class are educationally deprived and have need for special educational assistance.

15. The class is so numerous that joinder of all members is impracticable. The public schools in the Patchogue-Medford School District have over 800 Puerto Rican and other Hispanic students, a substantial number of whom have English language deficiencies. Plaintiffs and their class number among these students. There are questions of law or fact common to all members of the class, to wit: that defendants practices and policies violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and Title VI of the Civil Rights Act of 1964. The claims of the named plaintiffs

are typical of the claims of the class in that all plaintiffs allege they are prevented from equally and effectively participating in defendants' educational process by reason of defendants unlawful practices. The named plaintiffs, represented by experienced counsel, will fairly and adequately protect the interests of the class.

16. The prosecution of separate actions would create a risk of inconsistent adjudications establishing incompatible standards of conduct for defendants. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief, or corresponding declaratory relief, with respect to the class as a whole. Therefore, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

FACTUAL ALLEGATIONS

17. Plaintiffs and their class (hereinafter referred to as "plaintiffs"), are mandated by New York State law to attend the public schools of Patchogue-Medford School District. Education Law §3205(1).

18. Defendants receive and accept federal funds for the maintenance and operation of the public schools of the Patchogue-Medford School District. As a condition of securing such assistance, the defendants have submitted assurances to United States Department of Health Education and Welfare that they are in compliance with Title VI of the Civil Rights Act of 1964 and the federal regulations promulgated thereunder, 45 C.F.R. 80.4 (1969) The regulations require that school systems take affirmative action to ensure non-discriminatory equal educational opportunity to all students (33 C.F.R. 4955) and that they rectify any language deficiencies that national origin minority group school children,

such as plaintiffs, might have in order to open instruction to students with such language deficiencies (35 Fed. Reg. 11595).

DEFENDANTS FAILURE TO TAKE EFFECTIVE AFFIRMATIVE STEPS

19. The eduational programs and services provided the plaintiffs in the public schools are conducted predominantly, or, in most cases, exclusively in English by instructional and other staff who are overwhelmingly monolingual and unable to read, write, speak or understand Spanish. The materials and texts used in such educational programs and services are predominantly, and, in most cases, written exclusively in English.

20. The schools plaintiffs attend either have (1) no educational programs, services, and/or personnel equipped to meet the linguistic needs of these children; or (ii) an insufficient number of such programs, services and/or personnel; or (iii) inadequate or inappropriate educational programs and services. With respect to inadequate or inappropriate programs and services offered by defendants, a substantial number of plaintiffs are not receiving English language instruction and/or if they are offered such instruction, they receive their regular subjects in English only thereby preventing or impeding them from effectively participating in the learning process.

21. As a result of the foregoing, the plaintiffs are denied the opportunity to equally and effectively participate in the learning process on the same basis as other children in attendance in the public schools of the Patchogue-Medford School District, and to receive the concomitant economic, social, intellectual, and psychological benefits to be gained therefrom

FAILURE TO ACCURATELY IDENTIFY PUERTO RICAN AND OTHER HISPANIC STUDENTS WITH ENGLISH LANGUAGE DEFICIENCIES

22. Defendants do not have an accurate, systematic method to identify students with English language deficiencies. As a result, the defendants regularly and frequently misclassify the English language ability and achievement of plaintiffs and their class thereby minimizing the number of students who are classified as having English language deficiencies. The misclassification of these children results in a failure to provide such children programs or services to ensure their equal and effective participation in the learning process.

23. Defendants do not have a method to continuously, systematically and accurately evaluate the academic progress, achievement and linguistic levels of plaintiffs. As a result, defendants do not respond to the educational needs of plaintiffs as they do with respect to the English fluent students. Students who are initially recipients of programs and services are, by reason of defendants' failure to continuously, systematically and accurately assess their academic progress and achievement and their linguistic levels, prematurely transferred from these programs and are denied these services, thereby preventing them from equally and effectively participating in the learning process.

FIRST CLAIM FOR RELIEF

24. By failing to provide plaintiffs and their class with effective educational programs, services, and personnel that ensure them the opportunity to participate in the learning process on an equal basis as other students, defendants deny plaintiffs the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

SECOND CLAIM FOR RELIEF

25. By failing to provide plaintiffs and their class with effective educational programs, services, and personnel that ensure them the opportunity to effectively participate in the learning process and thereby the opportunity to obtain the education generally obtained by other students, defendants are in violation of Title VI of the Civil Rights Act, 42 U.S.C. 2000d and the regulations promulgated thereunder.

26. Plaintiffs have no adequate remedy at law. Plaintiffs suffer and will continue to suffer irreparable injury unless this Court enjoins the unlawful practices described herein.

WHEREFORE, plaintiffs respectfully pray that this Court:

A. Enter a final judgment pursuant to 28 U.S.C. §§2201-2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the policies and practices of the defendants towards the plaintiffs deny them equal educational opportunity and that such denial violates plaintiffs' rights under the Fourteenth Amendment to the Consitution of the United States, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d and the regulations promulgated thereunder.

B. Enter a preliminary and, thereafter, a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendants from continuing to violate plaintiffs' rights under the Fourteenth Amendment to the Constitution of the United States, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d and the regulations promulgated thereunder, and 42 U.S.C. §1983, and ordering defendants to design and implement a comprehensive plan to ensure plaintiffs equal educational opportunity and effective participation in the learning process to include, among other things:

1. A comprehensive, full-time bilingual-bicultural educational program for plaintiffs with the necessary and appropriate materials and other educational devices.
2. A method or procedure for accurately and systematically identifying and classifying Puerto Rican and other Hispanic children on a continuing basis who, by reason of their English language deficiencies are prevented from equally and effectively participating in the learning process.
3. An effective method or procedure for accurately and continuously evaluating the academic progress of Puerto Rican and other Hispanic children with English language deficiencies.
4. The development and implementation of an intensive and ongoing affirmative action program designed to recruit bilingual personnel in the Patchogue-Medford School District and elsewhere, from within the school system and from without, and to place such bilingual personnel appropriately in the school system.

D. Retain jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary or proper.

E. Award plaintiffs their costs and disbursement and reasonable attorney's fees.

F. Grant such other and further relief as this Court may deem just and proper.

DATED: New York, New York
February 26th, 1975

Respectfully submitted,

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D. Complaint in Intervention in *Evans* v. *Buchannan*, C.A. Nos. 1816-1822, D.Del., filed April 11, 1975

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BRENDA EVANS, et al., Plaintiffs, ARMANDO LUIS PACHECO and GUILLERMINA RODRIGUEZ de PACHECO, individually and on behalf of DAGMAR PRISCILLA PACHECO, RICARDO ARMANDO PACHECO, EPHRAIM ABDEL PACHECO and JERRY WILLIAM PACHECO, minors; and MONSERRATE ORTIZ, individually and on behalf of CARMEN L. OLIVERA and JUAN OLIVERA, minors, and on behalf of all others similarly situated, Intervenors, vs. MADELINE BUCHANNAN, et al., Defendants.	Civil Action Nos. 1816-1822 COMPLAINT IN INTERVENTION

I. NATURE OF THE CLAIM

1. This is a class action for relief to redress the deprivation of rights secured to the intervenors by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. Section 1983, 1988, 2000c-8 and 2000d, and 20 U.S.C. Section 1703(f). The intervenors, on behalf of themselves and all others similarly situated, seek declaratory and injunctive relief with respect to denials of equal educational opportunity by the defendants on account of the national origin of the minor Hispanic children residing in the City of Wilmington and attending schools in the Wilmington Public School District (hereinafter "Wilmington District").

II. JURISDICTION

2. The jurisdiction of the Court is invoked pursuant to: (a) Title 28 U.S.C. §§ 2201 and 2202, this being an action for the purpose of determining questions of actual controversy between the parties; (b) Title 28 U.S.C. §1331, this being an action arising under the Fourteenth Amendment to the Constitution of the United States and the amount of controversy exceeds, exclusive of interest and cost, the sum or value of Ten Thousand Dollars ($10,000.00); (c) Title 20 U.S.C. §1708; (d) Title 28 U.S.C. §1343(3) and (4), this being a civil rights and equal rights action filed pursuant to Title 42 U.S.C. §§ 1983, 1988, 2000c-8 and 2000d in so far as this is an action commenced by citizens of the United States to redress the deprivation under color of statute, ordinance, regulation, custom, or usage of this State, of rights, privileges and immunities secured by the constitution and laws of the United States.

III. INTERVENORS

3. Intervenors Armando Luis Pacheco, Guillermina Rodriguez de Pacheco and Monserrate Ortiz are adult citizens of the United States and the State of Delaware and residents within the Wilmington District, Wilmington, Delaware.

4. Intervenor children who sue by the parents and next friends, are minor citizens of the United States and the State of Delaware, residents within Wilmington District, Wilmington, Delaware, and participants in the bilingual-bicultural program presently conducted by said district.

(a) Intervenors Dagmar Priscilla Pacheco, Ricardo Armando Pacheco, Ephraim Abdel Pacheco and Jerry William Pacheco sue by their parents and next friends, Armando Luis Pacheco and Guillermina Rodriguez de Pacheco. Dagmar Priscilla and Jerry William attend the Cool Springs Elementary School and Ricardo Armando and Ephraim Abdel attend the Bayard Middle School.

(b) Intervenors Carmen L. Olivera and Juan Olivera sue by their parent and next friend, Monserrate Ortiz and are students at the Bancroft Middle School.

IV. CLASS ACTION

5. Intervenors bring this action in their own behalf and on behalf of all others similarly situated pursuant to Rule 23(a), 23(b)(1)(A), 23(b)(1)(B) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is composed of all Hispanic school children and their parents in the Wilmington

District who may be affected by this Court's impending relief in such a manner as to be denied access to an equal educational opportunity.

(a) The named plaintiffs will fairly and adequately protect the interests of the class;

(b) The class is so numerous that joinder of all members is impossible and impracticable;

(c) There are questions of law and fact common to the class;

(d) The claim of the representative parties is typical of the claims of the class;

(e) The defendants and their agents have acted and may act on grounds generally applicable to the class; thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole; and

(f) Attorneys for plaintiffs are experienced in class litigation.

V. DEFENDANTS

6. Defendant Delaware State Board of Education has the obligation to supervise and control the public schools of the State of Delaware. 14 Del. C. §121 et seq.

7. The Alexis I. duPont, Alfred I. duPont, Appoquinimink, Claymont, Conrad, DeLaWarr, Marshallton, McKean, Mt. Pleasant, New Castle-Gunning Bedford, Newark and Stanton School Districts are all suburban districts in New Castle County and intervenor-defendants in this suit.

VI. FACTUAL ALLEGATIONS

8. Defendant school authorities receive substantial amounts of federal assistance.

9. The Hispanic enrollment in the Wilmington District has increased from 0.5% in 1967 to 3.3% in 1973.

10. At present, there are 619 Hispanic students in the Wilmington District constituting approximately 4% of the pupil enrollment in said district.

11. The Hispanic enrollment at the high school level is concentrated at Wilmington High School at a rate of 4% while the middle and elementary students are concentrated at six schools for a rate of approximately 8%. The enrollment at one elementary school, Williams, is 17.5%.

12. Most of the Hispanic enrollment, 80%, is present in district schools which are 60-95% Black.

13. Although it is estimated that as early as 1969 there were as many as sixty-eight (68) Hispanic students at the Wilmington High School, only twenty-two (22) Hispanic students graduated from said school from 1969 to 1973 (1969 - 4; 1970 - 6; 1971 - 2; 1972 - 4; 1973 - 6).

14. In September, 1974 the Wilmington District initiated a bilingual-bicultural program concentrated primarily in the Williams, Lore, Cool Springs, Bayard, Bancroft and Wilmington High Schools for the main purpose of addressing the special educational needs of Hispanic students.

VII. STATEMENT OF THE CLAIM

Claim I

15. Hispanic students constitute an identifiable class for purposes of the Fourteenth Amendment within the Wilmington District.

16. Defendant school authorities have engaged in racial and ethnic discrimination in the operation and supervision of the school systems under their control.

17. The discrimination alleged at paragraph 16 has included the establishment of school boundaries on the basis of race and ethnicity of the children in the affected schools, thus ensuring that certain schools would remain predominantly white and certain schools would become and remain predominantly Black and Hispanic.

18. Defendant school authorities refuse to take reasonable steps to correct the effects of its policies and practices of racial and ethnic discrimination, and as a result of these policies and practices defendants have denied Black and Hispanic students equal protection of

the laws in violation of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. §§ 1983 and 2000d.

Claim II

19. Intervenors hereby incorporate by reference paragraph fifteen of this complaint.

20. The special linguistic characteristics of Hispanic students make bilingual and bilingual-hicultural programs necessary if Hispanic students are to avail themselves of equal educational opportunity available to other students.

21. Hispanic students have statutory rights to bilingual and bilingual-bicultural programs under §601 of the Civil Rights Act of 1964, 42 U.S.C. §2000d and §204 of the Equal Educational Opportunities Act of 1974, 20 U.S.C. §1703(f).

22. Upon information and belief, defendants have in the past, and are still failing to consider the special educational needs of Hispanic students and are now planning to limit, curtail, or otherwise adversely affect the bilingual and bilingual-bicultural program currently in effect in the Wilmington District and thereby deny the plaintiff intervenors their statutory and Constitutional rights to bilingual and bilingual-bicultural education.

23. Upon information and belief, defendants will and/or plan to disperse some Hispanic students so as to preclude, impede, limit or otherwise adversely affect, inter alia, the opportunity of said students to effectively participate in bilingual and bilingual-bicultural programs to be made available to other children in the Wilmington District.

24. Plaintiff intervenors are suffering and will continue to suffer irreparable injury. They have no adequate remedy at law.

VIII. RELIEF

WHEREFORE, plaintiff intervenors on behalf of themselves and all others similarly situated request that this Court:

1. Issue declaratory and injunctive relief restraining and enjoining defendants and their agents, representatives, employees, successors, and all persons who act in concert with them from:

a. limiting, curtailing or otherwise adversely affecting the teaching of the Spanish language;

b. denying equal educational opportunity in any manner to Hispanic students on the basis of language characteristics or ethnic origin;

c. abrogating the statutory rights of Hispanic children to bilingual and bilingual-bicultural education under §601 of the Civil Rights Act of 1964, 42, U.S.C. §2000d and §204 of the Equal Educational Opportunities Act of 1974, 20 U.S.C. §1703(f).

2. Additionally, intervenors on behalf of themselves and all others similarly situated request that this Court affirmatively require defendants and their agents, representatives, employees, successors and all persons who act in concert with them to maintain a program of bilingual and bilingual-bicultural education for all children in need or want thereof in order to insure equal educational opportunity.

3. Intervenors further pray for all further general and equitable relief as this Court may deem necessary together with all costs and attorneys fees.

Respectfully submitted,

Aida Waserstein

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Attorneys for Plaintiff Intervenors

DATED: April 11, 1975

E. Plaintiffs-Intervenors' Motion to Enforce Decree and for Supplemental Relief in *United States* v. *Texas*, C.A. No. 5281, E.D.Tex., June 3, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA)
Plaintiff,)
and)
GI FORUM and LULAC)
Plaintiffs - Intervenors) Civil Action No. 5281
v.)
STATE OF TEXAS, et al)
Defendants)

MOTION TO ENFORCE DECREE AND FOR SUPPLEMENTAL RELIEF

GI FORUM and LULAC, plaintiffs-intervenors, move this Court to enforce compliance with the Court's modified order of July 13, 1971, and for supplemental relief. This motion is made pursuant to this Court's order retaining jurisdiction for all purposes, "especially for the purpose of entering any and all further orders which may become necessary to enforce or modify" its decree in this cause. In support of this motion, GI FORUM and LULAC would show as follows:

PARTIES

1. Movants GI FORUM and LULAC are intervenors as plaintiffs in this litigation and have been certified "for all purposes as representative of all persons of Mexican-American descent or nationality in the State of Texas" pursuant to the Order of this Court of July 10, 1972.

2. Movants GI FORUM and LULAC are two Mexican-American membership organizations with members and chapters located in many cities, towns, and public school districts throughout the State of Texas. Both organizations have as two of their primary functions and purposes the improvement of educational opportunities of persons of Mexican-American descent or nationality and the protection and defense of the civil rights of this major ethnic and nationality group. Both organizations currently have adult members in school districts throughout the State of Texas whose children are denied an equal educational opportunity in the public elementary and secondary schools of Texas in violation of this Court's order of July 13, 1971.

3. Defendants herein are J.W. Edgar, Commissioner of Education (subsequently replaced by Commissioner Marlin Brockette) for the State of Texas, and the Texas Education Agency (hereinafter referred to as TEA) and its agents, servants or employees, the aforesaid being Defendants in the original action in this cause.

HISTORY OF ACTION

4. This action was originally commenced by the United States on March 6, 1970 for the purpose of dismantling the dual school system in Texas which had denied minority children their rights under the Fourteenth Amendment of the United States Constitution. A desegregation order was issued on November 24, 1970, 321 F. Supp. 1043 (E.D. Texas 1970), requiring TEA to fulfill its obligations under Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment of the United States Constitution. TEA and the Commissioner were directed to take affirmative steps and to withhold state funds and accreditation from school districts which failed to meet their constitutional duty to eliminate remaining vestiges of the dual school system. This order was supplemented by a further order on April 20, 1971, 330 F. Supp. 235 (E.D. Texas 1971). The November 24, 1970, order was affirmed and the April 20, 1971, order was modified and affirmed by the Fifth Circuit Court of Appeals, 447 F. 2d. 441 (5th Cir. 1971). This Court then reissued its April 20, 1971 order, as modified by the Fifth Circuit, on July 13, 1971. Justice Black denied a stay of that order on July 29, 1971, United States v. Edgar, 404 U.S. 1206 (1971), and the United States Supreme Court denied certiorari on January 11, 1972. Edgar v. United States 404 U.S. 1016 (1972). An order amending the July 13, 1971, order was filed August 9, 1973, and that order was subsequently amended by an order filed August 15, 1973. There were several interventions in this case, including one relating to the consolidation and integration of the San Felipe and Del Rio School Districts. This intervention culminated in the order of this Court of August 13, 1971, and the Memorandum Opinion of December 6, 1971, 342 F. Supp. 24 (E.D. Texas), aff'd 466 F.2d 518 (5th Cir. 1972), which bear significantly on this motion.

THE COURT'S ORDER OF JULY 13, 1971

5. The Modified Order of July 13, 1971, required TEA to undertake the affirmative duty of eliminating the dual school system and "to compensate for the abiding scars of past discrimination." Section G of the Court's order required TEA to ensure an equal educational opportunity for every student in the elementary and secondary public schools of Texas regardless of race, color, or national origin. Defendants also were required to recommend and implement curricular offerings and programs "to compensate minority children for unequal educational opportunities resulting from past or present racial and ethnic isolation, as well as programs and curriculum designed to meet the special educational needs of students whose primary language is other than English." In order to facilitate compliance, TEA was ordered to undertake a study of the educational needs of minority children, develop minimum standards and enforcement procedures, and submit annual compliance reports.

THE COURT'S ORDER OF DECEMBER 6, 1971

6. In its July 13, 1971, Order, the Court only required the development of a bilingual/bicultural plan to meet the educational needs of students whose primary language was other than English, but did not specify the minimum components of such a plan. The Court did so, however, in a subsequent proceeding involving the San Felipe Del Rio Consolidated Independent School District. In its December 6, 1971, Order, the Court recognized that "the Mexican-American students in the Del Rio area have been subjected, over the years, to unequal treatment with respect to the educational opportunities afforded them and are, thus, part of a so-called de jure dual school system based upon separation of students of different ethnic origins." The Court further recognized that this denial of constitutional rights of Mexican-American students was "condoned" "if not directly created by the State and its agencies," and that the State provided the overwhelming bulk of the operating revenues of the San Felipe Del Rio Consolidated Independent School District.

7. In order to reduce the "cultural and linguistic shock" of desegregation, to avoid the "creation of a stigma of inferiority," and to make available a meaningful educational experience to Mexican-American students, the Court ordered the defendants to implement a bilingual/bicultural program for all students in the following areas: Professional Staff Treatment and Assignment; Curriculum Design and Content and Instructional Methodology; Student Assignment and Classroom Organization; Staff Development; Parent and Community Involvement; Special Education; Non-instructional Support; Funding and Timing; and Evaluation of Comprehensive Plan.

8. The December 6, 1971, Order contained, inter alia, the following essential requirements:

a. Vigorous recruitment of Mexican-American administrators and staff;

b. A curriculum which recognized and valued the cultural environment and language of Mexican-American students;

c. Language programs which develop and reinforce both the student's primary and secondary language from early childhood through grade 12;

d. Bilingual counselling, intercultural awareness programs, and ethnic studies courses;

e. The establishment of multi-ethnic community councils to assist in the formulation and evaluation of the program;

f. The development of a plan to ensure the hiring and retention of competent bilingual/bicultural staff, including provision for their language and cultural awareness training;

g. The appointment of bilingual/bicultural teachers for special education classes;

h. The appointment of an educational consultant team to develop a plan to evaluate the effectiveness of the bilingual/bicultural program, and biannual reports to the Court and the parties on the progress of implementation.

RECENT JUDICIAL DEVELOPMENTS

9. In Keyes v. School District No. 1, Denver, Colorado, 303 F. Supp. 289 (D. Col. 1969), rev'd in part and remanded, 445 F.2d 990 (10th Cir. 1971), modified and remanded, 413 U.S. 189 (1973) (affirming the district court), On remand 380 F. Supp. 673 (1974), the district court followed this Court's decision in the present litigation and ordered the defendants to implement a bilingual/bicultural plan for Spanish-speaking children in the Denver schools, as part of its overall desegregation order, to eliminate the effects of past discrimination against Mexican-American students.

10. In Lau v. Nichols, 414 U.S. 563 (1974), the United States Supreme Court unanimously affirmed the obligation of school districts under Section 601 of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d), barring discrimination "on the ground of race, color, or national origin, in any program or activity receiving federal financial assistance," to "rectify the language deficiency" of students whose primary language is other than English: "[T]here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. . . ." The Court did not place reliance on the remedial powers of lower federal courts in desegregation cases, but rather relied upon the affirmative obligation to rectify language deficiencies which was set forth in Department of Health, Education, and Welfare Regulations:

> Where inability to speak and understand the English language excludes national-origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.
>
> Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track. 35 Fed. Reg. 11595. See also 38 Fed. Reg. 4955.

11. The Lau decision was followed in Serna v. Portales Municipal Schools, 351 F. Supp. 1279 (D.N.M. 1972), aff'd, 499 F.2d 1147 (10th Cir. 1974), in which the court ordered bilingual/bicultural relief. See also Aspira of New York, Inc. v. Board of Education of the City of New York, Docket No. 72 Civ. 4002 (S.D. N.Y., August 29, 1974) (Consent Decree).

THE EQUAL EDUCATIONAL OPPORTUNITIES ACT OF 1974

12. In response to the recognized need to provide bilingual/bicultural education to Spanish-speaking students and in order to secure to them an equal educational opportunity, on August 21, 1974, the Congress of the United States enacted the following provision of the Equal Educational Opportunities Act (hereinafter called "the Act"):

> "No State shall deny equal educational opportunity on account of his or her race, color, sex or national origin by . . . the failure by an education agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program." 20 U.S.C., Section 1703(f).

13. The Act explicitly recognizes that teachers may be assigned to particular schools, programs, and classes on the basis of race or national origin in order to implement programs designed to overcome language barriers. Section 1703(d).

14. The Act recognizes the ultimate responsibility of the State for the implementation and monitoring of bilingual/bicultural programs since, by its own terms, it is addressed to the states, and the term "education agency" is statutorily defined to include both local and state education agencies. Section 1720(a).

15. Section 1706 of the Act expressly provides that "an individual denied an equal educational opportunity as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate . . . ," and jurisdiction is expressly given to United States District Courts under Section 1708.

DESCRIPTION OF BILINGUAL EDUCATION PROGRAMS IN TEXAS

16. Nearly two years after this Court's order of July 13, 1971, and the TEA study of the educational needs of minority children of August, 1971, the Texas Legislature, recognizing the paramount responsibility of the State for bilingual/bicultural education, enacted the Texas Bilingual Education Act of 1973. Tex. Education Code Ann. Section 21.451 et seq. (1973). The major provisions of the Bilingual Act are as follows:

a. The Board of Trustees of each school district in the state must determine the number of limited-English-speaking ability (LESA) students in each grade, such students being defined as "children whose native tongue is a language other than English and who have difficulty performing ordinary classwork in English." Sections 21.452, 21.453(a).

b. Each school district with 20 or more LESA's in any grade, speaking the same primary language, must implement a bilingual education program. Section 21.453(b).

c. Full-time bilingual instruction is mandated in all courses required by law or by the school district. Bilingual courses must be offered in the comprehension, reading, speaking, and writing of the primary language and English and in the history and culture of the national origin group of the LESA's and of the United States. Section 21.454(a).

d. Bilingual instruction is permissible in other courses. Section 21.454(c).

e. The bilingual program is to be phased-in, one grade a year, with the first grade program to begin in 1974-1975. Bilingual instruction would be extended to the sixth grade by 1980-1981. Section 21.453(b). There is no state program contemplated for grades 7 through 12.

f. An LESA student assigned to the bilingual program remains in the program for three years or until she achieves a level of English competency which will allow her to perform successfully in classes conducted in English. Section 21.455(a). See also Section 21.455(c). Continuation in the program beyond three years requires the consent of the school district and the student's parents or legal guardian. Section 21.455(b).

g. The State Board of Education is responsible for promulgating rules and regulations "governing the issuance of teaching certificates with bilingual education endorsements to teachers who possess a speaking and reading ability in a language other than English in which bilingual education programs are offered . . . . Section 21.459(a). Nonetheless, decisions on the awarding of bilingual endorsements have been effectively delegated to local school districts.

h. Compensation for bilingual teachers is the same as that for regular classroom teachers with equivalent degrees. Section 21.459(b).

i. TEA is required to conduct bilingual education training institutes, and participating professionals and paraprofessionals must be reimbursed for the expenses of their participation. Section 11.17.

17. There are 185 school districts participating in programs under the Texas Bilingual Education Act. Upon information and belief, those participating school districts with high proportions of Mexican-American students have insufficient property tax bases to support minimally adequate regular or bilingual education programs. See Appendix. The average tax rate for the 185 districts is 91.2¢ per $100 of equalized market value of property, which is greatly in excess of the average property tax rate of 74.9¢ per $100 for the state as a whole. See TEA, Analysis of 1974 Market Value Information (1974) (Study performed by Management Associates, Inc.).

18. The Texas Bilingual Education Act is funded under the Foundation School Program, Section 21.460, and the allocation for the first biennium (1973-1975) of the program was 2.7 million dollars for the entire state, compared to the 6.2 million dollars originally requested by TEA.* Statewide, this amounts to approximately $4.11 per Spanish-surnamed student, kindergarten through grade twelve, for the two-year period, and approximately $11.10 per LESA, as identified by local school districts, kindergarten through grade twelve, special education, and nongraded. Focusing only on the first grade, the only phase of the program thus far implemented, most of the monies allocated have been devoted to in-service training for teachers and administrative costs, leaving only approximately $15 per participating pupil for the operating expenses of the bilingual program for 1974-1975.

19. Of the approximately 657,123 Spanish-surnamed students in public elementary and secondary schools in Texas, kindergarten through grade twelve and special education, approximately 243,185 or 37 percent have been identified as children of limited-English-speaking-ability in accordance with the Texas Bilingual Education Act. Currently, TEA claims to serve approximately 26,807 LESA first grade children in state bilingual education programs in 185 individual school districts, or about eleven percent of the total number of children so identified.

20. Upon information and belief, approximately 10 million dollars in federal funds were disbursed in Texas during the 1974-1975 school year under Title VII of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 880 et seq., and approximately 4.9 million dollars under Title VII of the Emergency School Aid Act for bilingual/bicultural education. Approximately 106,263 pupils participated in federally funded bilingual education programs in 55 Texas school districts, and the average expenditure per participating student was approximately $140 (or approximately $23 per

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*All statistics incorporated in this motion have been taken or extrapolated from the public documents of government agencies. These documents include the following: 1) Documents on file at the Texas Education Agency, Office of International and Bilingual (Bicultural) Education, including Applications for Operational Expenses Allocation for State Bilingual Education Programs Beginning September 1, 1974 (submitted by individual Texas school districts) and Research Office MIC, Survey of Bilingual Education Needs (Fall Survey District Supplement No. 1) (1973); 2) Department of Health Education and Welfare, Fall 1974 Elementary and Secondary School Civil Rights Survey; 3) United States Bureau of the Census, Census of the Population: 1970, General Social and Economic Characteristics, Final Report PC(1)-C45; 4) Memorandum, ESEA, Title VII, Bilingual Education Program Estimated Pupil Participation in Amount Awarded by State, Region, Project City, Name of Local Education Agency and Project Number for Fiscal Year 1974. Unless otherwise noted, all statistics are for the 1974-1975 school year.

Spanish-surnamed pupil in Texas). There are 130 school districts in Texas participating in the state bilingual education program who are not receiving federal funds for bilingual education.

21. Upon information and belief, there is a substantial overlap in students served under federal and state bilingual programs, with many students being counted for both programs.

22. Upon information and belief, an insubstantial amount of funds is expended for bilingual education from local revenue sources of Texas school districts.

23. Upon information and belief, TEA supervises and monitors the bilingual programs of the individual districts almost exclusively on the basis of Applications for Operational Expense Allocations, which must be filed and approved before state funds are made available. The Bilingual and International Language Division of TEA has fewer than eight employees to carry out this task. Additional monitoring is performed by teams in the Accreditation Division of TEA, but these teams are essentially concerned with matters other than bilingual education, e.g. physical facilities, school records, and general instructional programs, and individual districts are visited infrequently.

24. On information and belief, the basic design and implementation of the bilingual education program and the identification of LESA's is left entirely to the discretion of local school officials, with little or no monitoring by TEA to assure conformity with federal and state law.

25. On information and belief, teachers are qualified for the bilingual education program on the basis of a summer training institute, and 33 percent of the teachers so qualified are monolingual. Most of the teachers in the program are uncertified in bilingual education, but receive bilingual education endorsements on the basis of recommendations from local committees appointed by the superintendent of the school district.

26. Upon information and belief, TEA and local school districts have grossly underestimated the number of limited-English-speaking ability children, and employed nonuniform, subjective standards which result in the failure to identify many children whose primary language is other than English and who have difficulty doing classwork in English.

27. Upon information and belief, TEA has not set or enforced adequate minimum standards with respect to teacher endorsements, curriculum, or identification of limited-English-speaking ability students, despite the requirements of federal and state law.

28. Upon information and belief, all Spanish language students, not only those of limited-English-speaking ability, are in need of bilingual/bicultural education in order to overcome the linguistic, social, cultural and psychological barriers imposed upon them by the public schools of Texas. Spanish language students consist of those school-age children who live in homes where Spanish is spoken or in homes where one or both of the parents were raised in homes where Spanish was spoken. In such cases, identification with the mother tongue, and not simply the primacy of Spanish or the limited ability to speak English, is the critical determinant in the denial of equal educational opportunities.

29. Upon information and belief, TEA's failure to provide an adequate bilingual/bicultural program for all Spanish language students has resulted in an inordinately high dropout rate; for only 20 percent of all Mexican-American students who enter the first grade are graduated from the twelfth grade. TEA's statistics on the number of limited-English-speaking-ability children fail to take into account those Mexican-American students who are excluded from the public schools of Texas, or who require bilingual/bicultural programs even though they are not of limited-English-speaking-ability.

30. Upon information and belief, Spanish-surnamed students have lower academic achievement levels than Anglo students, they are more often retained in a grade and disciplined, and they are overrepresented in Special Education, Educable Mentally Retarded, and Trainable Mentally Retarded classes.

TEA'S VIOLATIONS

31. Movants GI FORUM and LULAC allege, on information and belief, that, with respect to the overwhelming majority of Spanish language students, including large numbers of limited-English-speaking-ability children, in school districts throughout the State of Texas, TEA has (a) failed to comply with the spirit and letter of this Court's Order of July 13, 1971, as interpreted in the order of December 6, 1971; (b) has acted in disregard of the decision of the United Stated Supreme Court in Lau v. Nichols, 414 U.S. 563

1974; and (c) has violated the Equal Educational Opportunities Act of 1974, 20 U.S.C. §1703(f).

32. Movants further allege, on information and belief, that the failure of TEA to implement and enforce an adequate procedure for the identification of limited-English-speaking-ability students has resulted in the failure to identify more than 164,000 LESA students, kindergarten through grade twelve and special education.* In combination with the approximately 216,378 LESA students, who are in grades other than the first grade and thus who do not participate in state programs, well over 380,000 LESA students in need of bilingual/bicultural education (excluding pre-school children) are completely denied such state-funded programs in violation of this Court's Orders and of the Constitution and laws of the United States. Upon information and belief, approximately three-fourths of these 380,000 LESA students are not participating in any local, state, or federal bilingual/bicultural programs.

33. Movants further allege, on information and belief, that the failure of TEA to extend bilingual/bicultural programs to all Spanish language students in Texas (estimated from United States Bureau of the Census statistics to be approximately 96 percent of the 657,123 such students) has denied an equal educational opportunity to more than 224,000 additional Spanish-surnamed students, who are not of limited-English-speaking ability. Combined with the 380,000 LESA's who receive little or no bilingual/bicultural instruction, more than 600,000 Mexican-American students have been denied their rights in violation of this Court's order of July 13, 1971, and the Constitution and laws of the United States.

34. Upon information and belief, Movants further allege that TEA has failed to provide the vast majority of LESA and Spanish-language students bilingual/bicultural education since July 13, 1971, in continuing violation of this Court's Orders and the Constitution and laws of the United States.

35. Upon information and belief, there are 27 or more school districts in Texas, with 20 or more LESA students (speaking the same primary language) in a grade, that are not participating in state bilingual/bicultural programs. TEA, in violation of this Court's orders and the Constitution and laws of the United States, has failed to compel said districts to offer a bilingual/bicultural program.

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*This estimate is projected from a survey of public elementary and secondary school principals in Texas conducted by the United States Commission on Civil Rights. The Commission found that 62 percent of Mexican-American first graders "did not speak English as well as the average Anglo first grader in the schools" surveyed. U. S. Commission on Civil Rights, The Excluded Student: Educational Practices Affecting Mexican-Americans in the Southwest, Report III p. 14 (1972).

36. Upon information and belief, few school districts in Texas offer a bilingual special education program, and the failure of TEA to compel such programs is in violation of this Court's order of July 13, 1971, and the Constitution and laws of the United States.

37. Upon information and belief, TEA has failed to take steps to implement, enforce, and monitor the bilingual/bicultural programs already established in the first grade in Texas school districts, and thus few school districts are operating such limited programs in conformity with the Orders of this Court and the Constitution and laws of the United States. Specifically, TEA has failed to insure the adequacy of bilingual/bicultural programs in terms of Professional Staff Treatment and Assignment, Curriculum Design and Content and Methodology, Student Assignment and Classroom Organization, Staff Development, Parent and Community Involvement, Special Education, Non-instructional Support, Funding and Timing, and Evaluation and Monitoring.

38. Upon information and belief, movants further allege that TEA's annual compliance reports are inadequate, redundant, and misleading, and do not comply with this Court's Order of July 13, 1971.

a. The criteria for the identification of LESA students are not uniform and allow for the exclusion of large numbers of LESA students.

b. Many of the programs listed as part of the bilingual/bicultural program are, in reality, courses in the regular school curriculum and are not compensatory bilingual/bicultural programs designed for students of limited-English-speaking ability.

c. The reports do not distinguish between students of limited-English-speaking ability and other students who participate in the various programs.

d. There are overlaps in the statistics such that many students are counted two or more times in calculating the number of students served under the various programs.

e. The number of hours that each student spends in each bilingual/bicultural course is not clear from the statistics.

f. There are overlaps in the statistics with regard to the number of hours of staff time spent on development such that many hours are counted two or more times in calculating the total number of hours spent in developing bilingual/bicultural programs.

39. Upon information and belief, TEA has failed to make available sufficient funds to local school districts, many of which have large Mexican-American populations and ad valorem property tax bases too small to support minimally adequate education offerings, to implement bilingual/bicultural programs in conformity with the Orders of this Court and the Constitution and laws of the United States.

PRAYER FOR RELIEF AND PROPOSED ORDER

40. Wherefore, the Movants pray that this Court enforce and secure compliance with Section G of its Order of July 13, 1971, and order TEA to implement the Court's Order of December 6, 1971, with respect to all school districts in Texas with 20 or more Spanish language and/or limited-English-speaking ability students in any grade.

41. Movants pray that this Court (a) order TEA to identify all Spanish language and limited-English-speaking ability students in Texas (kindergarten through grade 12, special education, and non-graded) and (b) permanently enjoin TEA to assure that all such students participate in bilingual/bicultural programs in accordance with the previous Orders of this Court and the Constitution and laws of the United States.

42. Movants further pray that this Court order TEA to insure that compensatory services are provided to Spanish language and LESA students to overcome the effects of any denial of bilingual/bicultural education after July 13, 1971.

43. Movants pray for such further relief as may be equitable, reasonable, and fitting.

44. Movants further pray that this Court allow them their costs, including reasonable attorneys' fees, and retain jurisdiction of this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Enforce Decree and for Supplemental Relief has been served upon the attorneys of record hereto by placing same in the United States Mail with proper postage affixed thereto and addressed as follows:

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Signed on this 3rd day of June, 1975.

Albert H. Kauffman
Albert H. Kauffman

APPENDIX

REVENUES, TEACHER SALARIES AND PERCENT WITH GRADUATE DEGREES BY PERCENT MEXICAN AMERICAN PUPILS ENROLLED IN TEXAS SCHOOL DISTRICTS, 1971-72

Percent Mexican Americans Enrolled[a]	(1) Local Rev/ADA[b]	(2) State Rev/ADA	(3) Local & State Rev/ADA	(4) Mean Teacher Salary[c]	(5) Pct. Teachers with MA or PhD	(No. of Pupils ADA 1971)
0 - 24.9	$412	$375	$787	$8,613	29.8%	(1,834,590)
25 - 49.9	429	387	816	8,165	21.6%	(172,883)
50 - 74.9	257	394	651	8,161	20.9%	(323,951)
75 - 100	192	379	571	7,545	12.3%	(156,080)

a) Percent Mexican Americans enrolled is from Department of Health, Education and Welfare, Fall, 1971, Title VI Survey

b) Revenues per pupil in average daily attendance (ADA) are means, weighted by the number of pupils in ADA in each school district, for 1971-72. The data are from official audit reports of school district accounts.

c) Teacher salaries and degree levels are from personnel records of the Texas Education Agency for 1971-72.

F. Plaintiffs-Intervenors' Interrogatories in *United States* v. *Texas*, C.A. No. 5281, E.D.Tex., July 3, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA Plaintiff, and GI FORUM and LULAC Plaintiffs-Intervenors vs. STATE OF TEXAS, et al. Defendants.	Civil Action No. 5281 PLAINTIFF-INTERVENORS' INTERROGATORIES

The plaintiff-intervenors request that the defendants, MARLIN BROCKETTE, COMMISSIONER OF EDUCATION FOR THE STATE OF TEXAS and the TEXAS EDUCATION AGENCY and its agents, servants and employees, answer under oath, in accordance with Rules 33 and 34 of the Federal Rules of Civil Procedure, the following interrogatories and respond to the following requests to produce documents within thirty (30) days after service of the attached or within such shorter period as may be ordered by the Court.

DEFINITIONS

A. "Defendant" or "defendants" as used herein includes Marlin Brockette, Commissioner of Education for the State of Texas, and the Texas Education Agency, its agents, servants and employees.

B. "Person" as used herein includes any natural person, department, division or other entity related to or associated with the defendants.

C. "English language deficiency" as used herein refers to English language deficiencies which impede a student's ability to effectively participate in the educational process. For purposes of these interrogatories, English language deficiency shall have the same meaning as "limited English speaking ability."

D. "Other Hispanic" as used herein refers to persons, other than Mexican-American, who were born or descended from persons who were born in Puerto Rico, Spain, the Dominican Republic, Cuba, any Latin American country, or any other country whose predominant language is Spanish.

E. Wherever the ethno-racial extraction of persons is requested herein, a breakdown by ethnic and racial extraction shall be provided, including but not limited to a breakdown by Black, White-Anglo, Mexican-American and other Hispanic. Mexican-American and other Hispanic may be denoted by Spanish surname.

F. "Writings" has the same meaning herein as do "documents" and "tangible things" in Rule 43(a), F.R.C.P,and includes without limitation the following items, whether printed or recorded, or reproduced by any other mechanical process, or written or produced by hand, namely: agreements ; communications; including intradepart mental communications; correspondence; telegrams; memoranda; records; books; summaries or records of telephone conversations; summaries or records of personal conversations or interviews; diaries; forecasts; statistical statements; graphs; charts; accounts; analytical records; minutes or records of meetings or conferences; reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; appraisals; records, reports or summaries of negotiations; brochures, pamphlets; circulars; trade letters; press releases; contracts; notes; projections; drafts of any documents; working papers; copies; marginal notations; photographs; drawings; computer print outs or summaries thereof; and other documents or writings of whatever description. In any case where duplicate copies of the same document exist, all copies should be produced which contain any writing or notes which do not appear on all other copies of that document. In each case where a document is demanded, all drafts

of the document are also demanded.

G. Unless otherwise specified, the time period to which the following interrogatories pertain is September 1970 through the date the answers to the said interrogatories are served upon plaintiffs.

INTERROGATORIES

I.

GENERAL ENROLLMENT DATA

1. State the number and/or percentage of students enrolled in the Texas Public School System, setting forth as to each:

A. The number and/or percentage enrolled by (1) ethno-racial extraction; (2) school district(s) and/or; (3) ethno-racial extraction within such school district(s).

B. The number and/or percentage in attendance on a full-time schedule, a short-time schedule, and/or special schedule, by (1) ethno-racial extraction, by (2) school district(s), and/or (3) by ethno-racial extraction within the school district(s).

C. The number and/or percentage by ethno-racial extraction and school district(s) that are (1) at grade level; (2) above grade level; (3) below grade level.

II.

STANDARDIZED TESTING

2. State whether any standardized examination(s) is given to students in the public schools.

3. If your answer to Interrogatory No. 2 is in the affirmative, describe each such standardized examination with particularity sufficient to identify it, setting forth as to each:

A. The name(s) of such examination(s).

B. The contents thereof.

C. The circumstances under which and the purpose for which such examination is administered.

D. The name(s), address(es), and position(s) held of the person(s) who developed and/or prepared such examination.

E. The date(s) such examination was developed and/or prepared.

F. The name(s), address(es) and position(s) of the person(s) who administer such examination.

G. The frequency with which such examination(s) is administered by school district(s), and the date(s) such was administered in the 1970-75 school years, on an annual basis.

H. The number and/or percentage of students who are given such examination by (1) ethno-racial extraction, (2) school district(s) and/or (3) ethno-racial extraction within school district(s).

4. With respect to your answer to Interrogatory No. 3, state whether there are any writings of any kind whatsoever relating to the purpose, preparation, development, use and/or administration of such standardized examination(s).

5. If your answer to Interrogatory No. 4 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the persons(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(s), and positions(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatorie

6. With respect to your answer to Interrogatory No. 3, describe fully and specifically the results of student performance as determined by the use of each such standardized examination, setting forth as to each:

A. The score(s), classification(s) and/or evaluation(s) of such student performance by grade level(s) identifying such by (1) ethno-racial extraction, (2) school district and/or (3) ethno-racial extraction within school district(s).

B. Any summary and/or standardization sampling of such score(s), classification(s), and/or evaluation(s) of such student performance by grade level(s), and school district(s).

C. The name(s), address(es), and position(s) held of the person(s) charged with scoring, classifying and/or evaluating student performance with respect to such examination.

D. The date(s) such examination was scored, classified, and/or evaluated in the 1970-1975 school years, on an annual basis.

7. With respect to your answer to Interrogatory No. 6, state whether there are any writings of any kind whatsoever relating to the scoring, classification, and/or evaluation of student performance as determined by the use of such standardized examination(s).

8. If your answer to Interrogatory No. 7 is in the affirmative, describe each such writing with particularily sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(s), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody or control, annex a true copy to the answers to these interrogatories.

9. With respect to your answer to Interrogatory No. 3, state whether there are any students to whom such standardized test(s) is administered.

10. If your answer to Interrogatory No. 9 is in the affirmative, state fully and specifically the reason(s) why such standardized test(s) is not administered to such student(s), setting forth:

A. The name(s), address(es) and position(s) held of the person(s) who made the decision to not administer such standardized test(s) to such student(s).

B. The number of student(s) to whom such standardized test(s) was not administered, by (1) grade level, (2) ethno-racial extraction, (3) school district, and/or (4) grade level(s) and ethno-racial extraction within school district(s).

III.

SPECIAL COURSE(S) AND/OR PROGRAMS

11. State whether there is any course(s) and/or program(s) conducted by the public schools intended to meet the educational needs of students, including but not limited to Mexican American and other Hispanic students with English language deficiencies and/or which is tailored to meet other special need(s) of students, e.g., physically handicapped, mentally retarded, gifted, etc.

12. If your answer to Interrogatory No. 11 is in the affirmative, describe each such course and/or program with particuliarity sufficient to identify it setting forth as to each:

A. The number and/or percentage of students enrolled in such course and/or program, by school district(s).

B. The ethno-racial extraction by number and percentage of such students in such course(s) and/or programs by school district(s)

C. Whether there are any students in each such course(s) and/or program(s) who have English language deficiencies, setting forth the number and/or percentage of such students by (1)ethno-racial extraction, (2) school district(s), (3) by ethno-racial extraction within such school district(s).

D. The student-teacher ratio in such course(s) and/or programs

E. The procedure(s), standard(s), and/or criteria including

but not limited to licensing, and in-service training requirements, if any, used in selecting teachers for such course(s) and/or programs.

F. The purpose(s) of such course(s) and/or programs.

G. The name(s), address(es) and position(s) held by the person(s) who conduct and/or administer such course(s) and/or program(s) and school district(s).

H. The name(s), address(es), and position(s) held by the person(s) who conduct and/or administer such course(s) and/or program(s) by school district(s).

I. The number of years such course(s) and/or program(s) has been in operation by school district(s).

J. The amount of funds allocated for such course(s) and/or program(s) describing the source(s) of such funds, i.e., federal, state, city, etc.

13. With respect to your answer to Interrogatory No. 12, describe fully and specifically the procedure(s) used to determine which students in the public schools are placed in such course(s) and/or program(s), setting forth the name(s), address(es), and position(s) held of the person(s) who determine whether a student is placed in such course(s) and/or program(s).

14. State whether English language deficiencies are considered in any way whatsoever in determining whether such students are placed in such course(s) and/or program(s).

15. If your answer to Interrogatory No. 14 is in the affirmative, state with particularity sufficient to identify it, the manner in which such English language deficiencies are considered with respect to such placement.

16. With respect to your answer to Interrogatory No. 14, state whether there are any writings of any kind whatsoever relating to such course(s) and/or program(s) including, but without limitation, its development and/or its use.

17. If your answer to Interrogatory No. 16 is in the affirmative, describe each such writing with particularity sufficent to identif it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held by the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

18. With respect to your answer to Interrogatory No. 11, state whether such course(s) and/or program(s) has been evaluated.

19. If your answer to Interrogatory No. 18 is in the affirmative, describe each such evaluation process with particularity sufficient to identify it, setting forth as to each course and/or program evaluated:

A. The name(s), address(es) and position(s) held of the person(s) who evaluated such course and/or program.

B. The date(s) such course and/or program was evaluated.

C. The circumstances under which and the purpose for which such course and/or program was evaluated.

20. State whether there are any writings of any kind whatsoever relating to the evaluation of such course and/or program.

21. If your answer to Interrogatory No. 20 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es) and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody or control, annex a true copy to the answers to these interrogatories.

22. With respect to your answer to Interrogatory No. 11, state whether there is any documentation of the progress achieved if any, by students participating in such course(s) and/or programs.

23. If your answer to Interrogatory No. 22 is in the affirmative, describe fully and specifically such documentation, setting forth:

A. The method(s), test(s), and/or procedure(s) used to measure the progress achieved by students in such course(s) and/or programs.

B. The number and/or percentage of students to whom such method(s), test(s) and/or procedures(s) was administered by (1) ethno-racial extraction; (2) by school district(s); (3) by ethno-racial extraction within school district(s).

C. The results of the method(s), test(s) and/or procedures used to measure the progress achieved by students in such course(s) and/or programs(s), identifying such for the school years 1970-1975 by school year.

D. The name(s), address(es), and position(s) held of the person(s) charged with administering such method(s), test(s) and/or procedure(s) used to measure the progress achieved by students in such course(s) and/or program(s).

E. The frequency with which such method(s), test(s) and/or procedure(s) is administered, and the date(s) such were administered in the 1970-1975 school year, on an annual basis.

24. With respect to your answer to Interrogatory No. 23(A), state whether there are any writings or any kind whatsoever relating to the development or use of such method(s), test(s), and/or procedure(s) to determine the progress achieved in such course(s) and/or pro-

gram(s).

25. If your answer to Interrogatory No. 24 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody or control, annex a true copy to the answers to these interrogatories.

IV.

STUDENTS WITH ENGLISH LANGUAGE DEFICIENCIES

26. With respect to your answer to Interrogatory No. 1(A), state whether there are any students who by reason of English language deficiencies are unable to effectively participate in the educational process.

27. If your answer to Interrogatory No. 26 is in the affirmative, state:

A. The number and/or percentage of such students by (1) ethno-racial extraction; (2) school district(s), and/or (3) ethno-racial extraction within such school district(s).

B. The procedure(s), test(s), and/or other factor(s) used to identify and classify such students describing such procedure(s), test(s) and/or other factor(s) with particularily sufficient to identify it,

C. If such method is by way of a test(s), indicate whether such test(s) is written, oral, or in part written and in part oral and the contents thereof.

D. The name(s), address(es), and position(s) held of the person(s) who developed such procedure(s), test(s) and/or other

factor(s).

E. The date(s) when such procedure(s), test(s), and/or other factor(s) was developed.

F. The name(s), address(es), and position(s) held of the person(s) who administer such procedure(s), test(s) and/or other factor(s) to such students.

G. The frequency with which such procedure(s), test(s) and/or other factor(s) is administered to such students.

28. With respect to your answer to Interrogatory No. 27(B), state whether there are any writings of any kind whatsoever relating to the development, preparation, use and/or administration of such procedure(s), test(s) and/or other factor(s).

29. If your answer to Interrogatory No. 28 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

30. State whether any of such procedure(s), test(s), and/or other factor(s) is no longer in use, stating fully and specifically the reason(s) for the discontinuance of such procedure(s), test(s), and/o factor(s) setting forth:

A. The name(s), address(es), and position(s) held of the person(s) who made the decision to discontinue such procedure(s), test(s) and/or other factor(s).

B. The date(s) when the decision to discontinue was made.

C. The date(s) when the procedure(s), test(s), and/or other factor(s) was discontinued.

31. With respect to your answer to Interrogatory No. 30, state whether there are any writings of any kind whatsoever relating to the discontinuance of such procedure(s), test(s), and/or other factor(s).

32. If your answer to Interrogatory No. 31 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories

33. With respect to your answer to Interrogatory No. 27(B), state whether such procedure(s), test(s), and/or other factor(s) used to identify and classify students who by reason of their English language deficiencies are prevented from effectively participating in the educational process has been validaded and/or evaluated.

34. If your answer to Interrogatory No. 33 is in the affirmative, describe each such validation and/or evaluation process with particularity sufficient to identify it, setting forth as to each such procedure, test, and/or other factor so validated and/or evaluated

A. The name(s), address(es), and position(s) held of the person(s) who validated and/or evaluated such procedure(s), test(s) and/or factor(s).

B. The date(s) such procedure(s), test(s) and/or factor(s) was validated and/or evaluated.

C. The circumstances under which and the purpose for which such procedure(s), test(s) and/or factor(s) was validated and/or evaluated.

35. State whether there are any writings of any kind whatsoever relating to the validation and/or evaluation of such procedure(s), test(s), and/or factor(s) used to identify and classify students who by reason of their English language deficiencies are prevented from effectively participating in the educational process.

36. If your answer to Interrogatory No. 35 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writings; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

37. With respect to Interrogatories Nos. 2 and 27(B), state whether there are students with English language deficiencies to whom the procedure(s), test(s), factor(s), and/or standardized test(s) is not applied.

38. If your answer to Interrogatory No. 37 is in the affirmative, state fully and specifically the reason(s) for not administering such procedure(s), test(s), factor(s) and/or standardized test(s) as to such students, describing with particularity sufficient to identify them (1) the method(s) and/or criteria used to identify

and classify such students and/or (2) the method(s) and/or criteria used to decide to whom such procedure(s), test(s), factor(s), and/or standardized test(s) is not administered, setting forth:

A. The name(s), address(es), and position(s) held of the person(s) who (1) determines to whom such procedure(s), test(s), factor(s) and/or standardized test(s) is not administered, and (2) applies the method(s) and/or criteria used to identify and classify such students.

B. The number and/or percentage of students in the school years 1970-1975 (1) to whom such procedure(s), test(s), factor(s), and/or standardized test(s) is not applied, and (2) who were classified or identified by way of any other method(s) and/or criteria, set forth annually by:

(a) ethno-racial extraction;

(b) school(s) and school district(s);

(c) ethno-racial extraction with such school(s) and school district(s).

39. For the school years 1973-74 and 1974-75, state whether there were any students identified by defendants as students with English language deficiencies who did not receive instruction pursuant to bilingual programs or English as a Second Language programs.

40. If your answer to Interrogatory No. 39 is in the affirmative, state the number and/or percentage of such persons, by (1) ethno-racial extraction; (2) school districts; (3) ethno-racial extraction within such school districts.

41. State whether defendants have devised or developed any guidelines, requirements, or criteria designed to guide schools and/or school districts in the development and implementation of special courses and programs on behalf of students with English language deficiencies.

42. If your answer to Interrogatory No. 41 is in the affirmative, describe each such writing with particularity sufficient to identify

it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writings; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

43. If the answer to interrogatory No. 41 is in the affirmative, state whether defendants have developed any procedures to monitor compliance by schools and/or school districts with said guidelines, requirements, or criteria.

44. If your answer to Interrogatory No. 43 is in the affirmative, describe each such procedure with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such procedure(s).

C. The date(s) such procedures were prepared.

D. The circumstances under which and the purpose for which such procedure(s) was prepared.

E. The name(s), address(es), and position (s) of the person(s) having possession, custody,or control of such procedure(s); if any such procedure is in the defendants' possession, custody, or control annex a true copy to the answers to these interrogatories.

45. With respect to Interrogatory No. 26, state whether there are any school districts who have twenty (20) or more students with English language deficiencies in any one grade level who have not implemented special courses and programs on behalf of said

students.

46. If your answer to Interrogatory No. 45 is in the affirmative, list the school districts so identified.

47. State whether there are any school district(s) with a student enrollment in excess of 25% Mexican American or other Hispanic, who have not implemented bilingual program(s), or English as a Second Language Program(s).

48. If the answer to Interrogatory No. 47 is in the affirmative, list the school districts so identified.

49. With respect to Interrogatories Nos. 41 and 43, state whether defendants have developed any regulations or requirements designed to impose sanctions on school(s) and/or school district(s) which have failed to develop and implement special courses and programs on behalf of students with English language deficiencies.

50. If your answer to Interrogatory No. 49 is in the affirmative, describe each such regulation or requirement with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such regulations or requirements.

C. The date(s) such regulation or requirement was prepared.

D. The circumstances under which and the purpose for which such regulations or requirements were prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such regulations or requirements; if any such regulation or requirement is in the defendants' possession, annex a true copy to the answers to these interrogatories.

51. If your answer to Interrogatory No. 49 is in the affirmative, state whether any sanctions have been imposed by defendants on a school(s) and/or school district(s) for failure to implement special courses and/or programs on behalf of students with English language

deficiencies.

52. If your answer to Interrogatory No. 51 is in the affirmative, list the school(s) and/or school district(s) so sanctioned.

V.

CLASS PLACEMENT

53. With respect to your answer to Interrogatories Nos. 2 and 27(B), state whether any such procedure(s), test(s), and/or other factor(s) is used to identify and/or classify students with English language deficiencies and whether such standardized test(s) as is administered is used to determine the grade level into which students are placed and/or the class within a grade level into which students are placed.

54. If your answer to Interrogatory No. 53 is in the affirmative, describe with particularity sufficient to identify it:

A. The manner in which such procedure(s), test(s), or other factor(s) used to classify and/or identify students with English language deficiencies and/or such standardized test(s) administered by the public schools is used in determining the grade and/or class within a grade level into which students are placed.

B. The name(s), address(es) and position(s) held of the person(s) charged with applying such in placing students into a grade or class within a grade level.

55. If your answer to Interrogatory No. 54 is in the negative, state with particularity sufficient to identify it:

A. The method(s) and/or criteria, if any, that is used to determine what grade or class within a grade level students are placed.

B. The name(s), address(es), and position(s) held of the person(s) charged with applying such procedure(s) and/or criteria in the placement of students, set forth by school and/or school district.

56. State whether the procedure(s), test(s), other factor(s) and/or method(s) used for the placement of students who have English

language deficiencies is different from that used in respect to other students in the public schools.

57. If your answer to Interrogatory No. 56 is in the affirmative, describe such difference(s) in the procedure(s) and/or criteria used with particularity sufficient to identify it, setting forth:

A. Fully and specifically the reason(s) for which such different procedure(s) is used with respect to the placement of students who have English language deficiencies.

B. The criteria used to determine which of such procedure(s) is used with respect to the placement of such students in the public schools.

C. The name(s), address(es) and position(s) held of the person(s) in charge of applying such procedure(s) and/or using such criteria, by school and school district.

58. With respect to your answers to Interrogatories Nos. 2, 27(B), and 57(A), state whether there are any writings relating to any such procedure(s), test(s), other factor(s), standardized test(s), method(s) and/or criteria used by the public schools to determine the placement of students.

59. If your answer to Interrogatory No. 58 is in the affirmative, describe each such writing with particulaity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which, and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories

60. State whether the (1) ability, (2) difficulty with or (3) inability to speak, read, write and/or comprehend English is considered in determining the grade and/or class within a grade level into which a student is placed.

61. If your answer to Interrogatory no. 60 is in the affirmative, state:

A. The manner in which such student's (1) ability, (2) difficulty with or (3) inability to speak, read, write and/or comprehend English is used to determine the grade and/or class within a grade level into which a student is placed.

62. With respect to the classes into which students who have English language deficiencies are placed, state:

A. Whether the subject matter studied by students in such classes differs from the subject matter studied by other students in equivalent grade levels in the public schools, describing the difference(s) in the subject matter with particulatity sufficient to identify it.

B. Whether students in such classes are taught at a different pace than that used for students in equivalent grade levels in the public schools, describing the difference(s) in such pace with particularity sufficient to identify it.

C. Whether different texts are used by such students in such classes, describing the difference(s) in such texts with particularity sufficient to identify them.

63. With respect to your answer to Interrogatory No. 61, state whether there are any writings relating to the class placement of students who (1) have no difficulty with, (2) have difficulty with or (3) are unable to speak, read, write and/or comprehend English.

64. If your answer to Interrogatory No 63 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es) and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es) and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody or control, annex a true copy to the answers to these interrogatories.

65. With respect to your answer to Interrogatories Nos. 2, 27(B), and 55(A), state:

A. The number and/or percentage of students to whom such procedure(s), test(s), other factor(s), method(s), criteria and/or standardized test(s)is administered are placed in the grade level that corresponds to their chronological age, identifying such students by (1) ethno-racial extraction; (2) school district(s); and/or (3) ethno-racial extraction with such school district(s).

B. The number and/or percentage of students to whom such procedure(s), test(s), and/or other factor(s) is administered are placed below grade level and/or above grade level, identifying such by (1) ethno-racial extraction; (2) school district(s); and/or (3) ethno-racial extraction within such school district(s).

C. The average length of time that elapses to achieve placement at grade level for students placed below grade level, identifying such by (1) ethno-racial extraction; (2) school district(s); and/or (3) ethno-racial extraction within school district(s).

D. The number and/or percentage of students placed below grade level in school years 1970-1975 who achieved transfer to grade level corresponding to their chronological age, set forth annually by (1) ethno-racial extraction, (2) school district(s), and/or ethno-racial extraction within such school district(s).

E. What method(s) and/or criteria, if any, are used to determine whether a student should be transferred from a class below

grade level to one at or above grade level.

66. With respect to your answer to Interrogatories Nos. 54(A) and 55(A), state whether there are any writings of any kind whatsoever relating to the development and/or use of such method(s) and/or criteria.

67. If your answer to Interrogatory No. 66 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

VI.

TRUANCY

68. State the numbers and/or percentages of students in the public schools who were truant during the school years 1970-1975 setting forth as to each school year:

A. The number and percentage of students in the public schools who were truant within each school and school district by (1) grade level, (2) ethno-racial extraction, and/or (3) ethno/racial extraction within grade level(s) and/or school district(s).

B. The number and percentages of student(s) by school district and by grade level(s) in the public schools who are

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of Mexican American or Hispanic extraction and have English language deficiencies.

69. Describe fully and specifically the procedure(s) and/or criteria used to determine whether or not a student in the public schools is a truant.

70. With respect to your answer to Interrogatory No. 69, state whether there are any writings of any kind whatsoever relating to the use of such procedure(s) and/or criteria.

71. If your answer to Interrogatory No. 71 is in the affirmative describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody or control, annex a true copy to the answers to these interrogatories.

72. State whether any reports, studies, and/or analyses have been prepared relating to the student truancy in the public schools.

73. If your answer to Interrogatory No. 72 is in the affirmative, describe each such report, study and/or analysis with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es) and positions held of the person(s) who prepared such report, study and/or analysis.

C.. The date(s) such report, study, and/or analysis was prepared.

D. The circumstances under which and the purpose for which such report, study, and/or analysis was prepared.

E. The name(s), address(es), and position(s) held of the person(s) who caused such report, study, and/or analysis to be prepared.

F. The name(s), address(es), and position(s) held of the person(s) for whom such report, study, and/or analysis was prepared.

G. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such report, study and/or analysis; if any such report, study and/or analysis is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

VII.

DROPOUTS

74. State the number and percentages of students in the public schools who dropped out from such schools during the school years 1970-1975, setting forth as to each school year:

A. The number and/or percentage of such students in the public schools who dropped out within each school district by (1) grade level, (2) ethno-racial extraction and/or (3) ethno-racial extraction within grade levels and/or school districts.

B. The number and/or percentage of such students by school district who are of Mexican American and Hispanic extraction and have English language deficiencies.

75. Describe fully and specifically the procedure(s) and/or criteria used to determine whether or not a student in the public schools is a drop-out.

76. With respect to your answer to Interrogatory No. 75, state whether there are any writings of any kind whatsoever relating to the use of such procedure(s) and/or criteria.

77. If your answer to Interrogatory No. 76 is in the affirmative,

describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es) and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es) and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody,or control, annex a true copy to the answers to these interrogatories.

78. State whether there are any reports, studies and/or analyses relating to students in the public schools who drop out.

79. If your answer to Interrogatory No. 78 is in the affirmative, describe each such report, study and/or analysis with particularity sufficient to identifyit, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es) and position(s) held of the person(s) who prepared such report, study and/or analysis.

C. The date(s) such report, study and/or analysis was prepared.

D. The circumstances under which and the purpose for which such report, study and/or analysis was prepared.

E. The name(s), address(es) and position(s) held of the person(s) having possession, custody or control of such report, study and/or analysis; if any such report, study and/or analysis is in the possession of the defendants, or in their custody or control, annex a true copy to the answers to these interrogatories

VIII.

GRADUATE DATA

80. State the number and/or percentages of students who have

graduated from the public schools, setting forth as to each:

A. The number and/or percentage of students who have graduated from such public schools by (1) ethno-racial extraction, (2) school district(s), and/or (3) ethno-racial extraction within the school district(s).

B. The number and/or percentage of students by school district(s) who graduated from such public school(s) (1) who have English language deficiencies and/or (2) who are of Mexican American or Hispanic extraction and have English language deficiencies.

C. The number and/or percentage of students who were graduated from the primary schools and into the intermediary schools and/or secondary schools by (1) ethno-racial extraction of such students, (2) school district(s) and/or (3) ethno-racial extraction within such school districts.

D. The number and percentage of students who graduated from the public schools and/or who have gone on to college, set forth by (1) ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school district(s).

81. With respect to Interrogatories Nos. 80(C) and (D), state the course requirement(s) and/or other criteria that must be fulfilled for a student to graduate from primary into intermediate and/or secondary school and from secondary school, setting forth:

A. The name, number of such course(s) and the credits, if any, awarded for such course(s).

B. The minimum grade level that must be achieved to be awarded credit towards graduation.

C. Describe with specificity sufficient to identify it, the type(s) of diploma(s) awarded, (e.g., academic, vocational, etc.) indicating number and/or percentage of students awarded such diploma(s) set forth by (1) ethno-racial extraction, (2) school district(s); and/or (3) ethno-racial extraction within such school district(s).

IX.

INSTRUCTIONAL AND OTHER STAFF

FLUENT IN SPANISH

82. State whether there are any teachers in the public schools who are fluent in Spanish.

83. If your answer to Interrogatory No. 82 is in the affirmative, state:

A. The method(s) and/or criteria used to determine such Spanish-language fluency describing such with particularity sufficient to identify it.

B. The number and/or percentage they comprise of the total public school teacher population by (1) ethno-racial extraction, (2) school district(s), (3) the ethno-racial extraction within such school district(s).

C. Whether such teachers are affiliated with any course(s) and/or program(s) for students who are of Mexican American or other Hispanic extracting and have English language deficiencies, set forth by school district(s).

84. With respect to your answer to Interrogatory No. 83(A), state:

A. If such method is by way of a test(s), indicate whether such test(s) is written, oral, or in part written and in part oral and the contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who developed such method(s), criteria, and/or tests.

C. The date(s) when such method(s), criteria, and/or test(s) was developed.

D. The name(s), address(es), and position(s) held of the person(s) who administers such method(s), criteria and/or test(s). to such persons.

E. The frequency with which such method(s), criteria, and/or test(s) is administered to such persons.

85. With respect to your answer to Interrogatory No. 83(A), state whether there are any writings of any kind whatsoever relating to the development, preparation, use and/or administration of such method(s), criteria and/or tests.

86. If your answer to Interrogatory No. 85 is in the affirmative, describe each such writing with particulatity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession , custody or control of such writing; if any such writing is in the possession of the defendants, or in their custody or control, annex a true copy to the answers to these interrogatories.

87. State whether any of such method(s), criteria and/or test(s) is no longer in use, stating fully and specifically the reason(s) for the discontinuance or such and setting forth:

A. The name(s), address(es), and position(s) held of the person(s) who made the decision to discontinue such method(s), criteria and/or test(s).

B. The date(s) when the decision to discontinue was made.

C. The date(s) when the method(s), criteria and/or test(s) was discontinued.

88. With respect to your answer to Interrogatory No. 87, state whether there are any writings of any kind whatsoever relating to the discontinuance of such procedure(s), test(s), and/or other factor(s).

89. If your answer to Interrogatory No. 88 is in the affirmative,

describe each such writing with particulatiry sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

90. With respect to your answer to Interrogatory No. 83(A), state whether such procedure(s), test(s), and/or other factor(s) used to determine such Spanish-language fluency has been validated and/or evaluated.

91. If your answer to Interrogatory No. 90 is in the affirmative, describe each such validation and/or evaluation process with particularity sufficient to identify it, setting forth as to each such procedure, test and/or other factor so validated and/or evaluated:

A. The name(s), address(es) and position(s) held of the person(s) who validated and/or evaluated such procedure(s), test(s), and/or other factor(s).

B. The date(s) such procedure(s), test(s) and/or factor(s) was validated and/or evaluated.

C. The circumstances under which and the purpose fon which such procedure(s), test(s), and/or factor(s) was validated and/or evaluated.

92. State whether there are any writings of any kind whatsoever relating to the validation and/or evaluation of such procedure(s), test(s), and/or factor(s) used to determine the Spanish fluency of

such teachers.

93. If your answer to Interrogatory No. 92 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es) and positions held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es) and position(s) held of the person(s) having possession, custody or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

94. State whether there are any paraprofessionals in the public schools who are fluent in Spanish.

95. If your answer to Interrogatory No.94 is in the affirmative, state:

A. What methods and criteria are used to determine such Spanish language fluency. Describe such with particularity sufficient to identify it.

B. The number and/or percentage they comprise of the total paraprofessional population by:

(1) ethno-racial extraction.

(2) school districts

(3) ethno-racial extraction within such school districts

C. Whether such paraprofessionals are affiliated with any courses and/or programs designed for students who are Mexican American or Hispanic extraction and have English language deficiencies, set forth by school districts.

96. With respect to your answer to Interrogatory No. 95(A), state:

A. If such method is by way of a test(s), indicate whether such test(s) is written, oral, or in part written and in part oral and the contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who developed such method(s), criteria, and/or tests.

C. The date(s) when such method(s), criteria, and/or test(s) was developed.

D. The name(s), address(es), and position(s) held of the person(s) who administer(s) such method(s), criteria and/or test(s) to such persons.

E. The frequency with which such method(s), criteria, and/or test(s) is administered to such persons.

97. With respect to your answer to Interrogatory No. 95(A), state whether there are any writings of any kind whatsoever relating to the development, preparation, use and/or administration of such method(s), criteria and/or test(s).

98. If your answer to Interrogatory no. 97 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents therof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es) and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

99. State whether any such method(s), criteria, and/or test(s) is no longer in use, stating fully and specifically the reason(s) for the discontinuance of such and setting forth:

A. The name(s), address(es), and position(s) held of the

person(s) who made the decision to discontinue such method(s), criteria, and/or test(s).

B. The date(s) when the decision to discontinue was made.

C. The date(s) when the method(s), criteria and/or test(s) was discontinued.

100. With respect to your answer to Interrogatory No. 99, state whether there are any writings of any kind whatsoever relating to the discontinuance of such procedure(s), test(s), and/or other factor(s).

101. If your answer to Interrogatory No. 100 is in the affirmative, describe each such writing with particulatiry sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es) and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the possession of the defendants, or in their custody or control, annex a true copy to the answers to these interrogatories.

102. With respect to your answer to Interrogatory No. 95(A), state whether such procedure(s), test(s), and/or other factor(s) used to determine the Spanish language fluency of such para-professionals has been validated and/or evaluated.

103. If your answer to Interrogatory No 102 is in the affirmative describe each such validation and/or evaluation process with particularity sufficient to identify it, setting forth as to each such procedure, test, and/or other factor so validated and/or evaluated:

A. The name(s), address(es), and position(s) held of the person(s) who validaded and/or evaluated such procedure(s), test(s), and/or factor(s).

B. The date(s) such procedure(s), test(s), and/or factor(s) was validated and/or evaluated.

C. The circumstances under which and the purpose for which such procedure(s), test(s), and/or factor(s) was validated and/or evaluated.

104. State whether there are any writings of any kind whatsoever relating to the validation and/or evaluation of such procedure(s), test(s), and/or factor(s) used to determine the Spanish language fluency of such paraprofessionals.

105. If your answer to Interrogatory No. 104 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The circumstances under which and the purpose(s) for which writing was prepared.

D. The name(s), address(es), and position(s) held of the person(s) having possession, custody and control of such writings; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories

106. State whether there are any persons who are fluent in Spanish whose duty it is to assist classroom teachers.

107. If your answer to Interrogatory No. 106 is in the affirmative, state:

A. The method(s) and/or criteria used to determine such Spanish language fluency describing such with particularity sufficient to identify it.

B. The number and/or percentage they comprise of the total "other person" population by (1) ethno-racial extraction, (2)

school district(s), (3) ethno-racial extraction within such school district(s).

C. Whether such "other persons" are affiliated with any course(s) and/or program(s) for students who are of Mexican American or other Hispanic extraction and have English language deficiencies, set forth by school district(s).

108. With respect to your answer to Interrogatory No. 107(A), state:

A. If such method is by way of a test(s), indicate whether such test(s) is written, oral, or in part written and in part oral, and the contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who developed such method(s), criteria, and/or tests.

C. The name(s), address(es), and position(s) held of the person(s) who administers such method(s), criteria and/or test(s) to such persons.

D. The date(s) when such method(s), criteria, and/or test(s) was developed.

E. The frequency with which such method(s), criteria and/or test(s) is administered to such persons.

109. With respect to your answer to Interrogatory No. 107(A), state whether there are any writings of any kind whatsoever relating to the development, preparation, use and/or administration of such method(s), criteria, and/or test(s).

110. If your answer to Interrogatory No. 109 is in the affirmative, describe each such writing with particularity sufficient to identify if, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The circumstances under which and the purpose for which such writing was prepared.

D. The date(s) such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, annex a true copy to the answers to these interrogatories.

111. State whether any of such method(s), criteria, and/or test(s) is no longer in use, stating fully and specifically the reason(s) for the discontinuance of such and setting forth:

A. The name(s), address(es), and position(s) held of the person(s) who made the decision to discontinue such method(s), criteria, and/or test(s).

B. The date(s) when the decision to discontinue was made.

C. The date(s) when the method(s), criteria and/or test(s) was discontinued.

112. With respect to your answer to Interrogatory No. 111, state whether there are any writings of any kind whatsoever relating to the discontinuance of such procedure(s), test(s), and/or other factor(s).

113. If your answer to Interrogatory No. 112 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

114. With respect to your answer to Interrogatory No. 107(A), state whether such procedure(s), test(s), and/or other factor(s)

used to determine the Spanish language fluency of such "other persons" has been validated and/or evaluated.

115. If your answer to Interrogatory No. 114 is in the affirmative, describe each such validation and/or evaluation process with particularity sufficient to identify it, setting forth as to each procedure, test, and/or other factor so validated and/or evaluated:

A. The name(s), address(es), and position(s) held of the person(s) who validated and/or evaluated such procedure(s), test(s) and/or factor(s).

B. The date(s) such procedure(s), test(s), and/or factor(s) was validated or evaluated.

C. The circumstances under which and the purpose for which such procedure(s), test(s), and/or factor(s) was validated and/or evaluated.

116. State whether there are any writings of any kind whatsoever relating to the validation and/or evaluation of such procedure(s), test(s), and/or factor(s) used to determine the Spanish language fluency of such "other persons."

117. If your answer to Interrogatory No.116 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writings; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

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X.

PERSONNEL LICENSING

118. State whether there are any license(s), certificate(s), and/or training given for the purpose of qualifying persons to teach in bilingual programs, or to teach in English as a Second Language Programs.

119. If your answer to Interrogatory No. 118 is in the affirmative, describe such license(s), certificate(s), and/or training program(s) with particularity sufficient to identify it, indicating the requirements which must be met to qualify for such license(s), certificate(s), and/or training program(s), and setting forth:

A. The name(s), address(es), and position(s) held of the person(s) charged with licensing, certifying, and/or training such teachers, para-professionals, and/or "other persons" who assist classroom teachers.

B. The name(s), address(es), and position(s) held of the person(s) who developed such licensing and/or certification procedure(s) or training program(s).

C. The number and percentage of teachers, para-professionals, and/or "other persons" who assist classroom teachers who have undergone licensing, certification and/or training set forth by (1) ethno-racial extraction; (2) school district(s); and/or (3) ethno-racial extraction within such school district(s).

D. The circumstances under which and/or the purpose for which such licensing procedure(s) is administered or training is given.

E. The amount of time spent in such licensing process and/or training.

120. With respect to Interrogatories Nos. 118 and 119, state whether there are any writings of any kind whatsoever relating to the development, preparation, and/or administration of the licensing certification, and/or training given for the purpose of qualifying

persons to teach in such programs.

121. If your answer to Interrogatory No. 120 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody or control of such writing; if any such writing is in the possession of defendants, or in their custody or control, annex a true copy to the answers to these interrogatories.

122. State whether any of such certification, licensing, and/or training given is no longer in use, stating fully and specifically the reason(s) for the discontinuance of such and setting forth:

A. The name(s), address(es), and position(s) held of the person(s) who made the decision to discontinue such certification, licensing, and/or training.

B. The date(s) when the decision to discontinue was made.

C. The date(s) when the certification, licensing, and/or training given was discontinued.

123. With respect to your answer to Interrogatory No. 122, state whether there are any writings of any kind whatsoever relating to the discontinuance of such licensing, certification, and/or training.

124. If your answer to Interrogatory No. 123 is in the affirmative describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

125. With respect to your answer to Interrogatory No. 118, state whether the requirements for certification, licensing, and/or training given has been validated and/or evaluated.

126. If your answer to Interrogatory No. 125 is in the affirmative, describe each such validation and/or evaluation process with particularity sufficient to identify it, setting forth as to each:

A. The name(s), address(es), and position(s) held of the person(s) who validated and/or evaluated such licensing, certification, and/or training.

B. The date(s) such licensing, certification, and/or training was validated and/or evaluated.

C. The circumstances under which and the purpose for which such licensing, certification, and/or training was validated and/or evaluated.

127. With respect to your answer to Interrogatory No. 125, state whether there are any writings of any kind whatsoever relating to the validation and/or evaluation of such licensing, certification, and/or training.

128. If your answer to Interrogatory No. 127 is in the affirmative describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writings; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

129. With respect to Interrogatory No. 119, describe fully and specifically the differences in status, if any, of such persons by reason of such license(s), certificate(s), and/or training and setting forth as to each such license, certificate, and/or training program:

A. The numbers and/or percentages of persons who have been given such license(s), certificate(s) and/or training by (1) the subject matter taught; (2) the school district(s) with which they are affiliated, (3) ethno-racial extraction, (4) ethno-racial extraction within such school district(s).

B. The numbers and/or percentages of persons who have been given such license(s), certificate(s) and/or training who are fluent in Spanish, by (1) ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school district(s).

130. If your answer to Interrogatory No. 118 is in the affirmative, state fully and specifically:

A. The procedure(s) whereby persons who have such license(s) certificate(s), and/or training become placed in such programs.

B. The number and/or percentage of persons who have such license(s), certificate(s), and/or have had such training who are teaching in bilingual or English as a Second Language Programs in the public schools, by (1) ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school district(s).

131. With respect to your answer to Interrogatory No. 118, state whether there are any persons who are teaching in bilingual programs or English as a Second Language Programs who are monolingual in English.

132. If your answer to Interrogatory No. 131 is in the affirmative, state the number and/or percentage of such persons by (1)ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school district(s).

133. With respect to your answer to Interrogatory No. 118, state whethere there are any persons who have not fulfilled the requirements set forth for such license(s), certificate(s), and/or training who are teaching in such programs. If your answer is in the affirmative, state the number of such persons by (1) ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school districts.

134. State whether there are any persons who have met such requirements and who are (1) not teaching in the public schools or (2) teaching programs in the public schools other than bilingual or English as a Second Language programs.

135. If your answer to Interrogatory No. 134 is in the affirmative, state the number and/or percentage of such persons by (1) ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school district(s).

136. State whether there are tenured and/or untenured teachers in the public schools, describing fully and specifically the difference in status, if any, as to such teachers, setting forth:

A. The numbers and/or percentages of such teachers who are tenured or untenured by (1) ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school districts.

B. The numbers and/or percentages of such teachers who are fluent in Spanish by (1) ethno-racial extraction, (2) school district(s), (3) ethno-racial extraction within such school districts.

XI.

FUNDING SOURCES

138. State the total budget of the Texas Education Agency, setting forth:

A. The funding source(s), i.e., Federal, State, City, etc.

B. The amount received and/or the amount scheduled to be received, the amount disbursed and/or scheduled to be disbursed, set forth by (1) funding source(s), (2) the statute(s) and/or regulation(s) pursuant to which said funds are awarded, (3) school district(s), and/or (4) by funding source(s) as allocated with such school district(s).

C. The terms and/or conditions, if any, under which said funds are awarded, (2) and the statute(s) and/or regulations pursuant to which such funds are awarded, set forth by funding source(s).

D. The manner and/or purposes for which such funds are used.

E. The name(s), address(es), and position(s) held of the person(s) charged with determining the manner in which such funds are used.

F. The per-capita expenditures based on the total student population by school district(s).

G. The amount set forth by funding source(s) and funding disbursement(s) that is used for (1) instructional purposes, and (2) non-instructional purposes (e.g., maintenance costs, etc.).

139. --

State whether the funds from any of the sources by the terms and conditions under which such funds were awarded are to be used exclusively for course(s) and/or programs intended to meet the needs of students with English language deficiencies.

140. If your answer to Interrogatory No. 139 is in the affirmative, set forth:

A. The number and/or percentage of students participating in such course(s) and/or programs identified by (1) ethno-racial extraction, (2) school district(s), and/or (2) ethno-racial extraction within school district(s).

B. The amount received, and/or the amount scheduled to be received set forth by (1) funding source(s), (2) the statute(s) and/or regulation(s) pursuant to which said funds are awarded, (3) school district(s), and/or (4) by funding source(s) as allocated to such school district(s).

C. The terms and/or conditions, if any, under which said funds were awarded, and the statute(s) and/or regulation(s) pursuant to which such funds are awarded, set forth by funding source(s).

D. The manner and/or purposes for which such funds are used.

E. The name(s), address(es), and position(s) held of the person(s) charged with determining the manner in which such funds are used.

F. The per-capita expenditures with respect to such funds set forth by (1) funding source(s) and (2) based on the total student population by school district(s).

G. The amount(s) set forth by funding source(s) that is used for (1) instructional purposes, and (2) non-instructional purposes (e.g., maintenance of physical plants, lunch programs, administrative costs, etc.).

H. Name(s) and position(s) held of personnel participating in such instructional course(s) and/or program(s) identifying those who are fluent in Spanish by (1) school district(s), and (2) ethno-racial extraction.

141. State whether any public school(s) and/or school district(s) has been notified in writing or otherwise by any of the funding sources, including defendants or any agencies thereof that such public schools and/or school district(s) has failed or has probably failed to comply with the terms and conditions with respect to the receipt of such funds.

142. If your answer to Interrogatory No. 141 is in the affirmative, state fully and specifically:

A. Whether such notification was given orally, and/or in writing.

B. State the date(s) such notification was received.

C. State the name(s), address(es), and position(s) held of the person(s) by whom such notification was received.

D. The name(s) and/or address(es) of the school(s) and school district(s) alleged to have failed or to have probably failed to comply.

E. The manner in which the public school was alleged to have failed or to have probably failed to comply.

F. With respect to your answer to Interrogatory No. 141, state whether any steps have been taken to remedy such failure or probably failure, describing such steps with particularity sufficient to identify them.

G. If there are any writings of any kind whatsoever relating to such notification of failure or probable failure to comply, and any such steps to remedy such failure or probably failure to comply, describe such writings with particularity sufficient to identify them, including the contents thereof; if any such writings are in defendants' possession, custody, or control, annex true copies to the answers to these interrogatories.

143. With respect to the Texas State Legislature, state whether defendants submitted a grant and/or funding proposal, application and/or request to the Legislature or any agency thereof pertaining to funding for bilingual programs and/or English as a Second Language programs.

144. If your answer to Interrogatory No. 142 is in the affirmative, describe each such grant and/or funding proposal, application, and/or request submitted to the Legislature, or any agency thereof with particularity sufficient to identify it, setting forth as to

each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held by the person(s) who submitted such grant and/or funding proposal, application and/or request.

C. The date(s) such grant and/or funding proposal, application and/or request was submitted.

D. The name(s), address(es), and position(s) held of the person(s) charged with reviewing such submittal.

E. The disposition thereof.

F. If there are any writings of any kind whatsoever relating to such submittal, describe such writings with particularity sufficient to identify them, including the contents thereof; if such writings are in defendants' possession, custody, or control, annex true copies to the answers to these interrogatories.

145. State whether there are any writings of any kind whatsoever relating to the funds received from the funding source(s) and/or any agency thereof including, without limitations, any grants and/or funding proposals.

146. If your answer to Interrogatory No. 145 is in the affirmative, describe each such writing with particularity sufficient to identify it, setting forth as to each:

A. The contents thereof.

B. The name(s), address(es), and position(s) held of the person(s) who prepared such writing.

C. The date(s) such writing was prepared.

D. The circumstances under which and the purpose for which such writing was prepared.

E. The name(s), address(es), and position(s) held of the person(s) having possession, custody, or control of such writing; if any such writing is in the defendants' possession, custody, or control, annex a true copy to the answers to these interrogatories.

147. Describe each writing by defendants in answering and/or preparing answers to these interrogatories with particularity sufficient to identify them and state the name(s) and address(es) of the person(s) having possession, custody, and control thereof.

148. State the name and address of each person who has personal knowledge of any of the facts set forth in response to these interrogatories.

These interrogatories shall be deemed continuing so as to require further and supplemental answers if defendant obtains additional information between the time the answers to these interrogatories are served and the time of the trial.

DATED: July 3, 1975.

Respectfully submitted,

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By: ______________________
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Attorneys for Plaintiffs-
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IV. Relief

This section contains two consent decrees (Aspira and Martinez); memoranda of plaintiffs and defendants in Aspira, illustrating the constantly recurring question on the scope of relief; and a portion of a report of a task force convened upon remand in Lau. The plaintiffs' memo from Aspira and the task force report from Lau illustrate the kinds of educational analysis which may be necessary.

A. Consent Decree in *Aspira* v. *Board of Education of the City of New York*, C.A. No. 72 Civ. 4002 (MEF), S.D.N.Y., August 29, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
------------------------------------X
ASPIRA OF NEW YORK, INC., et al.,
Plaintiffs,
-against-
BOARD OF EDUCATION OF THE CITY
OF NEW YORK, et al.,
Defendants.
------------------------------------X

72 Civ. 4002
(MEF)

CONSENT DECREE

1. WHEREAS, this class action was commenced on September 20, 1972 by Puerto Rican and other Hispanic public school children, their parents, and Aspira of New York, Inc., and Aspira of America, Inc., against the members of the Board of Education of the City of New York, the Chancellor of the City School District, and various officials of certain community school districts; and

2. WHEREAS, the Board of Education and the Chancellor of the City School District are the defendants entering into this decree, and are hereafter referred to as the "defendants", and,

3. WHEREAS, defendants acknowledge that plaintiff children have rights under 42 U.S.C. §2000d and the regulations promulgated thereunder enforced in Lau v. Nichols, 414 U.S. 563 (1974); and defendants acknowledge their duty to implement those rights and to secure for plaintiff children, the enjoyment thereof; and,

4. WHEREAS, plaintiffs and defendants have agreed upon a Program and the steps required for the implementation thereof which will secure the federally protected rights of plaintiff children; and,

5. WHEREAS, in view of the shared understanding of principles, the parties and the Court have concluded there is no further need to litigate the issue of liability or the nature of the program to be provided and the parties have mutually agreed to the entry of this consent decree; and,

6. WHEREAS, plaintiffs, by consenting to the entry of this decree do not waive any rights they have under the Fourteenth Amendment to the Constitution of the United States; and,

7. WHEREAS, plaintiffs maintain that the defendants have committed violations of law, and the defendants deny that they have committed violations of law; and, the defendants by consenting to the entry of this decree do not admit that they have committed any violations of law;

IT IS THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED, and the parties do hereby consent as follows:

1. An improved method for accurately and systematically identifying and classifying children who are Spanish speaking or Spanish surnamed will be designed and implemented by the Board of Education. In anticipation of the parties' entering into a consent decree, the development of such method has begun with the objective of implementation by October 1, 1974. The improved method of classifying shall be designed, among other things, to identify those children whose English language deficiencies prevent them from effectively participating in the learning process, and who can more effectively participate in Spanish. Such improved method will identify the children according to their ability to speak, read, write and comprehend

English and Spanish. The evaluation of a child's reading ability shall include an assessment of his/her reading skills, including reading readiness skills where appropriate, in both English and Spanish.

Periodically, and in any event at least once a year, each child who is Spanish speaking or Spanish surnamed will be so identified and classified. A child who first enters the New York City public school system at the beginning or during the school year and who is Spanish speaking or Spanish surnamed will be identified and classified as soon as possible, but in any event no later than the first full week after his/her enrollment.

In the event such improved method of identifying and classifying is not developed for full implementation at all grade levels by October 1, 1974, the defendants shall promptly notify plaintiffs' counsel in writing setting forth the reasons why full implementation at all grade levels is not possible, and describing the method of identifying and classifying children who are Spanish speaking or Spanish surnamed to be used in that event, and providing any and all instruments, instructions, or other materials relating to that method. Such instruments, instructions, or other materials shall be made available to plaintiffs' counsel subject to such stipulation as may be agreed upon between counsel for the parties as may be necessary to insure that the confidentiality and integrity of the testing instrument and materials are preserved.

2. The Board of Education acknowledges its responsibility to provide all children attending the public schools, both English-speaking and non-English-speaking children, with programs in which they can effectively participate and learn. All children whose English language deficiency

prevents them from effectively participating in the learning process and who can more effectively participate in Spanish shall receive: (a) a planned and systematic program designed to develop the child's ability to speak, understand, read and write the English language (a subject matter course taught in English, however, shall not constitute such a program; and a child should receive intensive instruction in English at times other than the periods in which he/she is scheduled to receive instruction in substantive courses in Spanish; (b) instruction in substantive courses in Spanish (e.g. courses in mathematics, science, and social studies) which is to say, a child is not to receive instruction in any substantive courses in a language which prevents his/her effective participation in any such course, rather than in a language in which he/she can more effectively participate; (c) a planned and systematic program designed to reinforce and develop the child's use of Spanish; and, a planned and systematic program designed to introduce reading comprehension in Spanish to those children entering the school system whose reading readiness assessment indicates the need therefor. In addition to the foregoing elements, (hereinafter referred to as the "Program") and not at the expense of those elements, an important element of the above Program will be that the students receiving instruction will spend maximum time with other children so as to avoid isolation and segregation from their peers.

3. This action is properly maintainable as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. Members of the class are: all New York City public school children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish, and the parents and

guardians of these children.

4. The Board of Education, pursuant to Section 2590-g and the Chancellor, pursuant to Section 2590-h of the Education Law of New York shall promulgate by April 1, 1975, to become effective September 1, 1975, such minimum educational standards as shall ensure that the Program shall be furnished to those children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish, and the Chancellor and Board of Education shall be responsible for ensuring that the Program is provided in each of the community school districts. In the event the Chancellor distributes or circulates proposed minimum educational standards for comment to individuals, groups, and/or organizations he may wish to consult and/or advise, he shall do so on or before November 15, 1974, and he shall make available to plaintiffs' counsel copies of such proposed minimum educational standards at least fifteen (15) days prior to their distribution or circulation. As part of such minimum standards to be promulgated, provision shall be made that appropriate and necessary personnel are utilized for the Program and that children entitled to the Program are not denied their right to receive said Program, within a school, because of reduction of personnel appropriate for the Program. On or before February 28, 1975 and prior to the promulgation of the minimum educational standards on April 1, 1975, the Chancellor shall make available to plaintiffs' counsel, the minimum educational standards. In the event plaintiffs object to the minimum educational standards on the grounds that the standards fail to comply with the terms of the Consent Decree and the parties are unable to resolve their differences promptly, the minimum educational standards in dispute shall be presented by plaintiffs to the Court.

5. Appropriate materials, tests, measuring devices, and other instructional instruments shall be distributed to school officials, and, where necessary, developed for use in the Program. Such materials, tests, measuring devices, and other instructional instruments shall be made available to plaintiffs' counsel subject to such stipulation as may be agreed upon between counsel for the parties as may be necessary to insure that the confidentiality and integrity of the testing instrument and materials are preserved.

6. Materials used in the Program shall avoid negative stereotypes of members of any ethnic or racial group, and, shall positively reflect, where appropriate, the culture of the children within the Program. Additionally, any personnel training program shall continue to be sensitive to the cultural diversities of children.

7. It is necessary to have an adequate staff for the purpose of implementing the Program. In that connection, a professional in the Program shall: (a) be fluent in the Spanish language, and able to fully comprehend and express himself in written Spanish; (b) possess the requisite content and knowledge skills in the substantive courses in which he teaches; (c) possess the requisite pedagogical skills; and (d) be capable of reading, writing and speaking English. In order to provide such staff the Board of Education shall in good faith take steps which shall include: (i) the developing and implementing of Programs to retrain personnel, who possess content and pedagogical skills, to become fluent in a second language to enable them to participate in the Program; (ii) the developing and implementing of an intensive and ongoing affirmative action program designed to recruit forthwith bilingual personnel in New York City and elsewhere, within the New York City school

system and without, and to place such bilingual personnel appropriately in the school system; (iii) the creation of additional bilingual licenses needed to implement the Program; (iv) the developing and implementing of programs designed to train forthwith personnel, who do not possess bilingual licenses, in preparing for and taking of licensing examinations for said licenses; (v) the scheduling and grading of all bilingual licensing examinations on an expedited basis, so as to provide an opportunity for persons to obtain bilingual licenses, and the use of the Board of Education's best efforts to schedule such examinations as frequently as is necessary to recruit and maintain sufficient staff; and (vi) the use of the Board of Education's best efforts to retrain or place personnel (a) who possess bilingual licenses but who are presently teaching under other licenses and (b) who are fluent in English and Spanish and who are presently teaching in bilingual programs.

8. The Chancellor shall, no later than October 30, 1974, identify a sufficient number of elementary schools, junior high schools, and high schools as Pilot Schools. By the beginning of the second semester of the 1974-75 school year, these Pilot Schools shall provide all elements of the Program to all children within the defined class attending those schools. Such Pilot Schools shall serve the purpose of, among other things, demonstrating on a systematic basis to school personnel on a borough-wide level the means of developing, implementing, and operating the Program. Moreover, these Pilot Schools shall be used to train appropriate school personnel in other schools. The experience of these Pilot Schools shall be widely disseminated. Defendants shall use their best efforts to generate maximum necessary funds to implement the Program in the Pilot Schools, and at a minimum, shall allocate the funds

reserved in Section II of Resolution 69 adopted August 14, 1974 for these purposes.

9. The defendants shall provide for full implementation of the Program for all children within the class by September, 1975, and shall submit to plaintiffs' counsel and to the Court by October 18, 1974 an overall plan detailing the relevant elements in the development and implementation of the Program and setting forth a Timetable.

10. The defendants are under a duty to use their maximum feasible efforts to obtain and expend the funds required to implement the Program pursuant to the Timetable. They shall make good faith efforts and undertake all necessary steps to secure sufficient funds from City, State, Federal and other sources for such implementation. In the event defendants' good faith efforts fail to generate sufficient funds to implement this Program pursuant to the Timetable, defendants shall be required to show good cause to this Court why sufficient funds are unavailable, including what steps, if any, defendants have taken to generate sufficient funds from City, State, Federal and other sources. Special reports relating to the efforts being made to obtain funds from City, State, Federal and other sources, in order to effectuate all elements of the Program pursuant to the Timetable, shall be made to this Court by the Chancellor of the City School District of the City of New York on the fifteenth day of each month. Specific and detailed information of any obstacles encountered with respect to funding shall be included in said reports. Copies of the reports shall be provided to the plaintiffs' counsel. In the event there is a reasonable likelihood that full implementation pursuant to the Timetable will not take place by reason of insufficient funds, lack of personnel (even though all necessary steps have been taken pursuant to the terms of this Decree), or otherwise, defendants' counsel shall

inform plaintiffs' counsel of the pertinent facts relating thereto forthwith. The Chancellor shall establish appropriate reporting mechanisms to insure that Community School Boards shall expeditiously communicate such information to the Chancellor. The issue of funding in the event the defendants' good faith, maximum feasible efforts fail to generate funds to implement the Program pursuant to the Timetable need not be determined at this time. However, should either party believe that the issue of funding should be adjudicated because the Program cannot be fully implemented pursuant to the Timetable by reason of purported insufficiency of funds, that issue may be brought before the Court for a determination to be embodied in a supplemental decree.

11. Representatives of the Chancellor and the Board of Education shall consult with plaintiffs with respect to the development and implementation of all items contained in this Consent Decree.

12. The defendants shall submit to the Court, with copies to plaintiffs' counsel, detailed monthly periodic compliance reports commencing on September 18, 1974, on the progress of the implementation of the Program; and on defendants' adherence to the Timetable. Such reports shall include copies of relevant supporting documentation and other materials relating to the implementation of the Program and adherence to the Timetable.

13. The defendants acknowledge that the plaintiffs by entering into this Consent Decree do not waive any rights plaintiffs may have with respect to costs, disbursements, and reasonable attorneys' fees arising out of this action; and plaintiffs expressly reserve any and all rights they may have to costs, disbursements, and reasonable attorneys' fees, arising out of this action.

14. The Court retains jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary or proper.

Dated: New York, New York
August 29, 1974.

S/ Marvin E. Frankel
MARVIN E. FRANKEL
United States District Judge

The parties to this decree, by their attorneys, hereby consent to the entry of this order:

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ATTORNEYS FOR The Chancellor
of the City School District,
and the Board of Education
of the City of New York

B. Memorandum of Board of Education and the Chancellor in *Aspira v. Board of Education of the City of New York*, C.A. No. 72 Civ. 4002 (MEF), S.D.N.Y., May 23, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

ASPIRA OF NEW YORK, INC., et al., :
Plaintiffs, :
-against- : 72 Civ. 4002 (MEF)
BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., :
Defendants. :

- - - - - - - - - - - - - - - - - - - -x

MEMORANDUM OF BOARD OF EDUCATION AND THE CHANCELLOR

This memorandum is submitted by the Board of Education of the City of New York ("Board") and the Chancellor pursuant to the direction of the Court to describe the various educational programs that the Board and Chancellor deem appropriate to comply with the HEW guidelines enforced in Lau. These guidelines appear in 35 Fed. Reg. 11595 (July 18, 1970) and are contained in a memorandum from the then Director of HEW's Office for Civil Rights to selected school districts with students of National Origin Minority Groups. A copy of the memorandum is attached hereto as Exhibit "A".

The Board of Education recognizes its responsibility to address the needs of those students whose substantial difficulties with the English language exclude them from effective participation in the educational program. This commitment has been recognized not merely in response to the present legal proceeding but through extensive services and programs that have been developed over the years. Some of this background is described in the latter parts of this statement.

The objective of the Board's various programs aimed at students with such language difficulty is the development of an adequate command of English. The basic framework for achieving this objective includes:

(1) Supplementary instruction in English with the objective of attaining early functioning competency in English;

(2) Instruction in whatever combination of English and the native language is necessary to provide the student access to the material.

It is clear that in fashioning particular programs and approaches for children with language disabilities there must be a sensitivity to the needs of individual students or groups of students.

The Board has categorized children with moderate or substantial language difficulties into "Category I" and "Category II", respectively (as part of a scale including Categories I, II and III). It should be emphasized that both in many of its programs and in its funding for such programs the Board of Education has included Category I children even though such children are probably not within the class of pupils required under the HEW guidelines to receive assistance.

No particular program should be considered as providing the definitive solution to the language handicaps dealt with in the HEW guidelines referred to in Lau. Numerous programs have been tried and suggested by educational authorities, many of them pioneered and implemented most extensively in the New York City school system. Much experimentation in this area has taken place and more remains to be done. It is perhaps in recognition of this that the HEW guidelines have avoided mandating or suggesting the specific nature of the "affirmative steps" which are to be taken to rectify the language deficiency problems. Rather, as the Solicitor General has noted in his memorandum for the United States as amicus curiae in Lau: "Whether that assistance should be in the form of a bilingual curriculum rather than special training in the English language or some other program is for the informed judgment of the local school authorities, so long as a substantial effort is made." (p. 27, footnote omitted)

The following material summarizes broadly the types of programs and services now in effect in some form in many of the City's schools and which the Board believes are appropriate to comply with HEW's guidelines. The development and implementation of these programs has accelerated in recent years, as confidence has grown in particular educational approaches and as trained personnel have become available. The comprehensive survey now in progress, together with any other data which may be required, will permit an evaluation of the extent to which these programs currently provide adequate coverage of affected students.

The programs and services described below correspond to those used in the survey presently being conducted. It is the opinion of the Board and Chancellor that these programs and services, either individually or in combination, are appropriate means under the HEW guidelines of meeting the needs of students with English language deficiencies.

1. Bilingual Instruction Program.

Such a program includes instruction in the native language; instruction in English as a second language; utilization of the native language as a medium of instruction in subject areas; instruction designed to develop the child's awareness of his own cultural heritage. Examples of such programs in use in various schools in the New York City school system include: Graded Bilingual Classes; Non-graded Bilingual Classes; Bilingual Mini-School; Bilingual School.

2. English as a Second Language.

An instructional program specifically designed for students with English language difficulties intended for the development and mastery of English language skills with emphasis on aural-oral language development. The program provides for learning English through:

a. Participation in the ongoing daily classroom curriculum activities.

b. Instruction in English as a Second Language in lessons designated as special language lessons.

3. Language Arts Taught in the Native Language.

An instructional program designed for the maintenance and development of native language skills (listening, speaking, reading and writing) with the child's native language used as the medium of instruction by a teacher who is fluent in the child's native language.

4. Subject Area Instruction in Native Language.

Classes where the native language of the pupil is utilized as a medium of instruction in the teaching of a subject area (e.g. mathematics, science, social studies, fine arts) by a teacher who is fluent in the child's native language.

5. Cultural Studies and Heritage Program.

An instructional program in which pupils are provided with the opportunity to learn about their own cultural heritage.

6. Subject Areas Taught in English with Reinforcement in Native Language.

An instructional program in which English is utilized as the primary medium of instruction with reinforcement provided in the native language of the pupil for clarification purposes.

7. Comprehensive Reading Program.

Comprehensive reading instruction designed on a programmed, sequential basis to develop English reading skills, with English as the medium of instruction. Examples of such programs include: DISTAR; SRA; Miami Linguistics; Merrill Linguistics; Words in Color; Dimensions.

8. Comprehensive Reading Program with Reinforcement.

Comprehensive reading instruction designed on a programmed, sequential basis to develop English reading skills, with English as the medium of instruction and with reinforcement in the child's native language. Examples of such programs include: DISTAR; SRA; Miami Linguistics; Merrill Linguistics; Words in Color; Dimensions.

9. Orientation Classes.

An introductory program for non-English speaking children, which gives them some facility in the use of English, utilizing English as the medium of instruction.

10. Orientation Classes in Native Language.

An introductory program for non-English speaking children, which gives them some facility in the use of English, utilizing the child's native language as the medium of instruction by a teacher who is fluent in the child's native language.

11. Supportive Pupil Personnel Service Program.

A program which provides service by any one or more of the following: bilingual guidance counselor; bilingual teacher in school and community relations; bilingual paraprofessionals.

Other services and programs which are provided in various schools and districts, such as after school study programs, clearly benefit the language handicapped child. In addition, many programs and activities aimed at the parents of Category I and II children are clearly of use in ultimately helping the child adjust to and benefit from his school program. Bilingual notices to parents and bilingual newsletters are common. Other programs are aimed at assisting parents to help the child in certain areas of his school work, or to provide remedial English services for the parent.

The affidavit of Assistant Superintendent Henrietta B. Percell dated March 25, 1975, and submitted in opposition to plaintiffs' motion for summary judgment, provides numerous illustrations of the variety and diversity of services provided to meet the linguistic needs and cultural differences of Spanish-speaking children in Categories I and II in the various decentralized community school districts (see especially paragraphs 8 and 9).

The Board wishes to emphasize the importance of maintaining flexibility in the delivery of these programs to affected students. Preservation of a variety of available programs and the ability to experiment with innovative programs is critical to the delivery of educational services that address the needs of affected students. These needs necessarily vary with the individual student's age, educational level and extent of English language difficulty. These individual differences are factors to be considered in determining the programs or combinations of programs to be made available to the affected students.

Any consideration of program services must take into account limitations imposed in some areas by an inadequate supply of trained and qualified teachers. As our comments below indicate, the Board has done a great deal to create special licenses for bilingual personnel and to attempt to recruit and train qualified personnel. We plan to continue such efforts. There will be an increase in recruitment and training of teachers in special fields with a concomitant increase in specialized licenses offered in the field of bilingual education.

In-service courses will be offered and continued, with a view toward increasing the effectiveness of all teachers in helping them to meet the needs of their non-English speaking pupils. Special workshops will be organized for supervisors in areas with large concentrations of non-English speaking pupils.

The Career Ladder Program, which enables paraprofessionals to achieve professional status, will be continued.

An additional, and perhaps all too obvious limitation on any programs of the Board of Education is that imposed by the realities of budget constraints. Limited funds must be used to meet the Board's many legal and educational responsibilities.

Despite such constraints, it should be emphasized that the Board has made substantial expenditures for services to children with English language deficiencies from the Board's regular tax levy allocations for instructional staff and supplies. In addition, the Board has made a concerted effort in recent years to receive additional funding to further meet the needs of language disadvantaged children and to emphasize the necessity for such funding on a priority basis. This has applied to special federal and state reimbursable programs and supplementary tax levy allocations from the City's budget earmarked to meet these needs.

The Board's commitment to provide adequate programs for children with language difficulties is reflected by its efforts over an extended period of time. Public school educational programs for children from non-English speaking homes have undergone a steady evolution since the end of World War II. The "melting pot" approach that prevailed before the war and aimed at assimilating the children of immigrants from many different ethnic, linguistic and cultural backgrounds has given way to newer approaches that seek to preserve the pupils' native language and culture by building on existing language skills and thought processes while teaching proficiency in English. These changes came about largely under the impact of the extensive post-war migration from Puerto Rico to New York City and are now benefitting children from other language groups as well.

The principle underlying the diverse programs that have developed and are currently employed in the public school system is to enable each child to develop his abilities and talents to his fullest extent. As knowledge in the field of learning has increased, as new educational techniques have been developed and tested, and as the aspirations and goals of various groups within the City have changed, a wide variety of programs has evolved to meet the different needs of children with widely varying experiences, skills and abilities.

The first effort of the New York City school system as a whole to deal with the problems confronting children of Puerto Rican background came with the publication in 1948 of "A Program of Education for Puerto Ricans in New York City."

Beginning in 1948, new positions were established by the Board of Education to be filled by Spanish-speaking persons who were to assist principals and teachers in working with Puerto Rican pupils and parents, or to give English language instruction to non-English speaking children.

The Curriculum Division organized a committee in 1951 to analyze the experience of many schools working on the problems of the education and adjustment of Puerto Rican pupils, to provide teachers with the basic materials then available and to bring together for teachers at various school levels those practices that seemed to be effective in meeting current conditions.

Then, beginning in 1953 and continuing through July 1957, a major research project was undertaken under the joint sponsorship of the Board of Education and The Fund for the Advancement of Education. It was published as "The Puerto Rican Study." Among the practical achievements of the Study were the following:

.Development of curriculum bulletins for use in teaching English to non-English speaking pupils.

- .Development of a guide for teaching science to pupils still trying to learn English.
- .Development of a guide for teenaged Puerto Rican high school pupils.
- .Development of criteria for allocating special staff in schools to enable them to serve the needs of Puerto Rican and foreign-born or non-English speaking children.
- .Development of in-service programs to reach teachers of non-English speaking pupils.
- .Development of a scale for rating ability to speak English that was used by the Commissioner of Education of the State of New York in defining non-English speaking pupils as a basis for the distribution of additional state aid.

During the tenure of the present Board, starting in 1969, a concerted effort has been made to expand and improve programs to meet the needs of non-English speaking pupils. The current concern with providing such programs is reflected in the Chancellor's recent budget requests. For the 1972-73 academic year the Chancellor asked for and was granted nearly $1 million of supplementary tax levy funds earmarked for services to pupils with English language deficiencies. These funds, in addition to the regular tax levy allocations used for staffing, enabled the community school districts to provide essential new services, including teachers of English as a Second Language, bilingual teachers, bilingual guidance counselors, and bilingual teachers in school and community relations fluent in a second language. In addition he requested and was granted $80,000 to support a new Office of Bilingual Education to be developed with advice from the newly created Citywide Advisory Commission on Bilingual Education, to provide leadership and support in this area of vital and growing importance. In June 1972 the Office of Bilingual Education was created and directed by Hernan La Fontaine, Principal since 1968 of the City's first bilingual school. The supplementary $1,000,000 which was provided in the Board's budget from City tax levy funds specifically for services to pupils with English language deficiencies was utilized in over 20 community school districts.

For the current 1973-74 fiscal year the supplementary tax levy allocation has been increased to $6,000,000. The Executive Budget for the 1974-75 fiscal year, proposed by the Mayor on May 15, 1974, contains a supplementary allocation of $11,000,000 to be applied by the Chancellor for expanded services for non-English speaking and for handicapped pupils.

Considerable progress has been made in New York City schools in recent years in providing services to language disadvantaged children as evidenced by the following:

1) There has been a substantial increase in bilingual classes, bilingual schools and mini-

schools, and English as a Second Language classes throughout the school system.

2) A large number of reimbursable programs have been developed under Title I, Title III and Title VII of the Elementary and Secondary Education Act, through state and other funding sources. New York City has vigorously applied for these funds in order to establish bilingual, bicultural, and other programs in the community school districts and the high schools for language disadvantaged children.

3) Substantial numbers of Puerto Rican pupils have been prepared for college through the College Bound and College Discovery Programs.

4) Ethnic studies courses have been introduced in many high schools in response to student interest and staff encouragement.

5) A Bilingual Resource Center has been established by the Office of Bilingual Education to serve as a clearinghouse, resource library, training and dissemination center on bilingual education.

6) Many in-service training programs have been conducted in the community school districts and the high schools, e.g. Workshops in the New Puerto Rican Experience, sponsored by the Bureau of Educational and Vocational Guidance in cooperation with Aspira.

7) Spanish-language courses at the Berlitz and Gattegne schools were taken by over 500 guidance counselors in 1972-73. Additional courses in Spanish and other languages have been offered through the After-School Professional Development Program.

8) Stepped-up recruitment of bilingual teachers and counselors and teachers of English as a Second Language have brought about the appointment of 1,100 regularly licensed staff members during the past ten years to serve non-English speaking children in the regular instructional program. (This number does not include paraprofessionals.)

9) A number of new bilingual licenses have been established, including licenses for Bilingual Teacher of Early Childhood Classes, Bilingual Teacher of Mathematics, Bilingual Teacher of General Science and Bilingual Guidance Counselor. Examinations have been scheduled for various additional bilingual licenses. There is attached hereto as Exhibit "B" a schedule of some of the License Examinations to be given in the current year.

10) The High School Directory, which is distributed to every graduating pupil in the intermediate and junior high schools, has been provided in Spanish, French, Italian, Greek and Chinese during the past three years.

11) The New York City Consortium on Bilingual Education, better known as Project B.E.S.T., is completing its fourth academic year in New York City. It is a five year enterprise designed to meet the needs of children, ages 5-12, and represents an attempt on the part of colleges and public schools to offer equal educational opportunities to Spanish-speaking and English-speaking children through bilingual activities in the classroom. The professional goals of the program are to add to the reservoir of college-trained personnel skilled in bilingual teaching and bilingual methodology; to help the target group of children to surmount learning obstacles, thus resulting in maximum achievement in school. Some of the broader objectives include acquisition of bilingual (second language) competency by the children and the development of an understanding and appreciation of Hispanic and American cultures.

12) The Bilingual Teacher Corps Program in New York City began during the summer of 1973 with a pre-service program for 32 student-interns and is now established in Districts 1, 4, 6 and 12, in conjunction with City College. The specific objectives are: (a) to provide a corps of well-trained teachers and supervisors with direct experience and an academic background in bilingual education, (b) to develop competency-based, field oriented programs for the training of bilingual personnel, (c) to institutionalize changed patterns of preparation and placement of bilingual personnel, and (d) to develop curriculum materials for bilingual programs.

This is but a sampling of projects and activities related to our programs for non-English speaking pupils.

Dated: Brooklyn, New York
May 23, 1974

C. Plaintiffs' Reply Memorandum in *Aspira* v. *Board of Education of the City of New York,* C.A. No. 72 Civ. 4002 (MEF), S.D.N.Y., May 31, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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-------------------------------------X
                                     :
ASPIRA OF NEW YORK, INC., et al,     :
                                     :
                      Plaintiffs,    :
                                     :
            -against-                :      72 CIV. 4002 (MEF)
                                     :
BOARD OF EDUCATION OF THE CITY       :
 OF NEW YORK, et al,                 :
                                     :
                      Defendants.    :
-------------------------------------X
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PLAINTIFF' REPLY MEMORANDUM

TABLE OF CONTENTS

page

TABLE OF CASES i

PRELIMINARY STATEMENT. 1

DEFENDANTS' MISCONSTRUE LAU v. NICHOLS 2

- Lau Is Not Limited To Children With "Substantial" English Language Difficulty . . 2
- The Board Is Obligated To Do More Than Make A Substantial Effort 4
- Defendants Are Accountable To This Court Under Lau v. Nichols. 5

EXCEPT FOR BILINGUAL EDUCATION, DEFENDANTS' SO-CALLED PROGRAMS ARE INADEQUATE 8

DEFENDANTS' ATTEMPTS TO JUSTIFY THEIR FAILURE TO IMPLEMENT BILINGUAL PROGRAMS IS WITHOUT MERIT. 16

CONCLUSION 20

TABLE OF CASES

page

Goldberg v. Kelley, 397 U.S. 254, 261, 266 (1970). 19

Green v. School Board of New Kent County, 391 U.S. 430 (1968) 6

Griffin v. Illinois, 351 U.S. 12 (1956). 19

Justice v. Board of Education, 351 F. Supp. 1252, 1263 (S.D.N.Y. 1972). 19

Lau v. Nichols, ___ U.S.____, 94 S.Ct. 786, 39 L.Ed. 1 (1974) 1,2,3,4,5,6, 10,14,15,20

Palmer v. Thompson, 403 U.S. 217, 226 (1971) . . . 19

Shapiro v. Thompson, 394 U.S. 618, 633 (1969). . . 19

Swann v. Charlotte - Mecklenburg Board of Education, 402 U.S. 1 (1971). 6

Watson v. City of Memphis, 373 U.S. 526, 537-38 (1963) 19

PRELIMINARY STATEMENT

This Reply Memorandum is submitted by plaintiffs pursuant to this Court's Memorandum dated April 30, 1974 as a critique of defendants' Memorandum dated May 23, 1974 describing "the various educational programs that the Board and the Chancellor deem appropriate to comply with the HEW guidelines enforced in Lau."[1] Stripped to its essentials, the May 23 Memorandum seeks to achieve three purposes: first, to limit the application of Lau v. Nichols, ________ U.S. ________, 94 S.Ct. 786, 39 L.Ed. 1 (1974), by misreading the Supreme Court's opinion and the pertinent HEW guidelines and regulations; second, to persuade this Court that defendants' present program is adequate and effective despite their prior statements to the contrary; and, third, to offer explanations for the limited nature of their programs.

Despite defendants' efforts, the May 23 Memorandum, itself, constitutes another in a long series of admissions by defendants that bilingual educational services are necessary for the education of plaintiffs. What emerges from these prior admissions and the May 23 Memorandum is the overriding question: whether plaintiffs' undisputed rights to the receipt of equal educational benefits through effective participation in the instructional programs can lawfully be limited by purported budgetary constraints.

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[1] Defendants' Memorandum, May 23, 1974, p. 1. Hereinafter cited as defendants' Memorandum.

DEFENDANTS' MISCONSTRUE LAU v. NICHOLS

Defendants' misinterpret Lau v. Nichols, supra, to: (a) limit the New York City Board of Education's (the "Board") statutory obligation to only those children in category II (children whose "substantial difficulties with the English exclude[s] them from effective participation in the educational program.")[2]; (b) limit the Board's obligation to only making a substantial effort to offer assistance to plaintiffs, without any reference to the effectiveness of that effort;[3] and, (c) invest the Board with sole discretion to determine the nature and extent of the affirmative steps it must take to satisfy plaintiffs' rights under federal law, exclusive of any review by this Court.[4]

Lau is Not Limited To Children With "Substantial" English Language Difficulty

The defendants seek to restrict the scope of Lau and the federal guidelines by substituting their own language for that of the Supreme Court and HEW. Nowhere is there support for defendants' suggestion that Lau is limited to only those children with "substantial English difficulties". The unambiguous language in the guidelines refers to children with "language deficiency", without any reference to terms such as substantial, severe, moderate, etc. The point at which the child's language deficiency triggers the application of Lau is equally unambiguous: when the deficiency results in the national origin-minority group child's receiving ess benefits than the English-speaking child. Whether or not efendants' choose to label a child's language difficulties, substantial or moderate is not controlling; the question is whether e is receiving equal benefits. Defendants' instructional program ust, therefore, be open to all plaintiffs, whether they happen to e placed in categories I or II, in order that they receive bene-its equal to English dominant children.

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[2] Defendants' Memorandum p. 2.

[3] Id.

[4] Id., 3.

Defendants recognize that children in both categories equire assistance. The definition of category I is cast in terms f such need. In distributing whatever tax levy funds are allocated o bilingual programs, for example, the distribution formula is ased on the number of category I and II children within a local istrict.[5] The Board's 1974-75 Budget Estimate, in defining the

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. See Letter dated August 27, 1973 to former Mayor Lindsay and hers from Harold Siegel, Secretary to the Board, enclosing the ard's August 14, 1973 resolution establishing an allocation formula r Bilingual Education tax levy funds based upon the number of tegory I and II children. Copies of these documents are annexed reto as Appendix "A".

number of children for whom bilingual education is essential, focuses on both categories I and II children. To recognize that category I children have English language deficiencies and need assistance, and then to suggest that Lau and the guidelines do not apply to these children, is insupportable.

The Board Is Obligated To Do More Than Make A Substantial Effort

Defendants suggest that so long as they make "substantial efforts" to provide assistance to plaintiffs, their obligations under Lau are fulfilled. They imply that since their past efforts "over an extended period of time"[6] have resulted in "considerable progress"[7], and since their present efforts to secure additional tax levy funds are substantial, their Lau obligations are satisfied. Defendants further imply that where budgetary constraints prevent prompt implementation of effective programs for all children in need, their obligations under federal law and the fulfillment of plaintiffs' rights must, at best, be postponed.

However, the crucial issue is not whether defendants' purported efforts are substantial in terms of offering more services or requesting more funds than in the past, but whether these efforts result in affirmative programs which equalize the receipt of educa-

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6. Defendants' Memorandum, p. 10.
7. Id., p. 13.

tional benefits. So-called budgetary constraints cannot justify defendants' failure to equalize such benefits as is required by federal law.

Accordingly, defendants miss the point when they claim that their programs, "clearly benefit the language handicapped child."[8] To simply benefit plaintiffs is not enough. Defendants must provide equal benefits to plaintiffs and English dominant children alike in order to open the instructional program to plaintiffs.[9]

Defendants Are Accountable To This Court Under Lau v. Nichols

Petitioners in Lau did not ask the Supreme Court to mandate a particular educational program. That question was not before the Court. Lau v. Nichols, supra. at 39 L.Ed. 1,3. Petitioners only asked the Supreme Court to review whether the district court erred in refusing to order, among other things, that affirmative steps be taken to equalize benefits and to open the instructional program to petitioners. Defendants have erroneously inferred from the absence of a specific remedy in the Supreme Court's opinion, that they have sole discretion in formulating whatever steps they believe fulfill Lau. Such an inference

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[8] Id. 7

[9] It is noteworthy that defendants fail to describe their efforts in terms of effectiveness.

is an unwarranted intrusion into the equitable jurisdiction of this Court, and is not supported by any precedent, including Lau.

The Supreme Court does not fashion a particular type of relief in school discrimination cases. Questions regarding the appropriateness of relief are reviewed by the Court to determine for example, whether the relief ordered by a district court is consistent with its equitable powers, or, whether the relief is sufficiently effective.[10] However, these kinds of cases reach the Supreme Court only after the district court has decreed, in its judgment, what is the appropriate relief. Lau is consistent with this approach. The Supreme Court determined, among other things, that federally financed local school districts must take affirmative steps in accordance with the HEW guidelines and regu lations, and remanded the case to the district court to fashion relief.

This Court may take into consideration the "informed judgment" of the defendants in ordering appropriate programs, and if this Court is persuaded that the defendants' judgment is in fact, sound and fulfills the requirements of federal law, the

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[10] See Swann v. Charlotte - Mecklenburg Board of Education, 40 U.S. 1 (1971); Green v. School Board of New Kent County, 391 U.S 430 (1968).

Court is free to adopt all or any part of their suggestions. However, in some instances the "informed judgment" of the local school authorities may be influenced by factors, such as fiscal considerations, which are ultimately contrary to the best interests of the school children affected. Accordingly, the defendants' determination of what programs are necessary and appropriate is in no way conclusive.

It should be noted, that in expressing their "informed judgment", defendants consistently emphasize the need for bilingual education. Defendants expressed their "informed judgment" in their Budget Estimate in calling bilingual education "essential" and the Board's "highest priority"; they expressed it in their speeches, their testimony, in their policy statements,[11] and even in their May 23 Memorandum.[12]

. See Plaintiffs' Memorandum dated May 20, 1974 pp. 20-23.

. See p. 8 , infra.

EXCEPT FOR BILINGUAL EDUCATION, DEFENDANTS' SO-CALLED PROGRAMS ARE INADEQUATE

Plaintiffs agree with defendants that the principle which should underly an effective educational program for plaintiff children is "enabl[ing] each child to develop his abilities and talents to his fullest."[13] Plaintiffs further agree with defendants that educators and school systems, including the defendants', now stress the need to adopt programs that "preserve the pupils' native language and culture by building on existing language skills and thought processes while teaching proficiency in English."[14] The parties agree that "teachers of English as a Second Language, bilingual teachers, bilingual guidance counselors, and bilingual teachers in school and community relations fluent in a second language" are "essential new services."[15] Plaintiffs and the Board both view progress in terms of bilingual education, as all but one of defendants' examples of "considerable progress" relate to bilingual education. These expressions of defendants "informed judgment" are consistent with their prior statements respecting plaintiffs' educational needs. Yet, the programs defendants

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13. Defendants' Memorandum, p. 10.

14. *Id.*

15. *Id.* p. 13.

list in their May 23 Memorandum contradict these principles and statements, because, in part, their objective is inadequate.

The stated objective of the Board's various programs is to develop among those students with "substantial English language difficulty" an "adequate command of English".[16]

Former Chancellor Harvey B. Scribner has stated that:

> In a system of education where English is the language of instruction and the medium of communication, *the student who's not fluent in English obviously is at a severe disadvantage when it comes to learning*. (Emphasis added).[17]

If an "adequate command of English" means anything less than fluency in the English language, then the plaintiffs take issue with the limited objective of defendants' programs. If "adequate command of English" means that when the medium of instruction is English the child is able to barely understand what is said and no more; if it means that the child can speak in English, in a halting, hesitating, accented manner, but is unable to easily, fully, and correctly express his thoughts and ideas to his teacher; if it means that he can perhaps communicate in English, but fails to understand the written material placed before him, then a child with an

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[16] Defendants' Memorandum, p. 2.

[17] Defendants' Answer, Exhibit A, p. 1.

"adequate command of English" does not effectively participate in the educational system.

Moreover, several of defendants' programs do not even meet this limited objective. Thus, the stated aim of defendants' orientation classes, which the defendants contend satisfy *Lau* and the HEW guidelines, is to give the child "some facility in the use of English".[18] On the other hand, the objective of the defendants' English as a Second Language program is the "development and mastery of English language skills"[19]. Defendants' objectives are at best ambiguous and contradictory.

As stated by the defendants, the two components within the framework purportedly designed to achieve their "major objective" are:

> 1. Supplementary instruction in English with the objective of attaining early functioning competency in English;
>
> 2. Instruction in whatever combination of English and the native language is necessary to provide the student access to the material.[20]

Supplementary instruction is given to the plaintiffs for a fraction of, or after, the school day. It is an attempt to compensate for the inadequate instruction given to them the rest of the school day. When the supplementary instruction is English as a Second Language, for example, the child is "pulled out" from his regular classroom program and taught by another teacher in a small group setting. For the remainder of the school day the child languishes in the "ongoing daily classroom curriculum" in which he cannot effectively participate. By accepting "participation in the ongoing daily classroom curriculum" as satisfactory, defendants seem to be resurrecting immersion as a means of teaching English. This technique, by which children are forced to remain in English monolingual classes and absorb the new language from their peers, is in conflict with the HEW mandate to take affirmative steps to rectify language deficiency.

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[18] Defendants' Memorandum, pp. 6-7.

[19] *Id*. p. 5.

[20] *Id*. p. 2.

By pulling the Spanish dominant child out from his class, and, by abandoning him to classes in which he cannot effectively participate for the greater part of the school day, the child becomes frustrated and suffers the consequences of poor instruction. There is nothing supplementary about this approach to instruction. This approach is, at best, piecemeal, and in the course of attempting to learn English the child is inevitably locked out of participation in other instructional areas. To supplement or compensate for ineffective instruction during a fraction of the day could not presume to

meet the requirements of equal educational opportunity. Finally, supplementary educational methods generally result in duplication, and otherwise poor utilization of instructional manpower and funds.

"Access to material", the second component in defendants' framework, is as ambiguous as "adequacy in English." For example, where the medium of instruction is English and where paraprofessionals, fellow students, or school aides interpret or reinforce instruction and materials to the Spanish-dominant child, defendants could assert that the child has "access to material." Clearly, however, that child would not be receiving the same benefits as his English dominant counterpart.

It is inconceivable that the Board of Education of New York City does not refer to learning in either component. Acquiring a new language and having "access to material" cannot be equated with educational opportunity, or in any way reflect the essence of learning. It does, however, expose the Board's double standard in educating English speaking and Spanish speaking students. Learning, as plaintiffs have already set forth in their Memorandum, is a dynamic process which includes psychomotor, linguistic, cognitive and conceptual processes which reach far beyond "access to material". English dominant children are fully exposed to these processes while Spanish dominant children are not.

It is also evident that the Board does not have clear or sound goals for children of limited English speaking ability. The programs listed and described in defendants' Memorandum in no way manifest a consistent or structured effort to achieve even the defendants' limited, ill-defined objective.

The Board attempts to justify the lack of consistency and structure in addressing the needs of children of limited English speaking ability by stating:

> the ability to experiment with innovative programs is critical to the delivery of educational services that address the needs of affected students. These needs necessarily vary with the individual student's age, educational level and extent of English language difficulty. These individual differences are factors to be considered in determining the programs or combinations of programs to be made available to the affected students.[21]

No parent or educator would "systematically" subject children to haphazard experimentation.

Moreover, the Board never defines the "needs" they refer to nor the instructional methods which would best address the different "factors" which would affect these needs. There is little doubt, however, that such definitions of needs and goals for other children in the school system have been articulated by defendants in the context of instructional goals and methods. Again, defendants' school system operates under a double standard and discriminates against plaintiffs.

As a result of defendants' inadequate and unequal goals for plaintiffs, and as a result of their inability to clearly articulate the Spanish dominant childrens' needs, defendants cannot relate the programs listed in their Memorandum to any relevant, sound pedagogical standard, much less the standard of Lau. The Board is consistently unable to set forth which programs, other than bilingual education, are productive, effective alternatives for educating children with limited English speaking ability.

Defendants never explain, for example, how an orientation class (item 9) which purportedly gives a child only "some facility in the use of English," complies with the standards in Lau. Or, how a cultural studies and heritage program (item 5), alone, rectifies English language deficiency for the purpose of opening the instructional program. Defendants do not clarify how an English as a Second Language program (item 2), alone, prevents retardation which they specifically cited in their 1974-75 Budget Estimate, or, how students who suffer this retardation can participate in an instructional program on an equal basis with English speakers, much less achieve parity of competition with them.

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[21] Id., p. 8.

Defendants never tell how plaintiffs can effectively participate in the ongoing daily classroom curriculum, if they have difficulty understanding the medium of instruction. No pedagogical reason, sound or otherwise, is presented by defendants to justify offering only one subject to a child in a language he understands, and not other subjects (item 4). Nor do defendants delineate when and why a child is taught his subject areas or reading in English with reinforcement in Spanish (items 6 and 8) while others are taught both subject areas (item 4) and reading totally in Spanish (items 3 and 5). Defendants do not explain how a comprehensive reading program which was specifically designed for English-dominant children helps the Spanish child learn to read or speak. Finally, defendants fail to explain how a child's rights under Lau are met by the supportive personnel, alone, who do not perform the functions of teachers, or whether receiving their class curriculum by only reinforcement in a comprehensible language comports with a standard of equal benefits.

DEFENDANTS' ATTEMPTS TO JUSTIFY THEIR FAILURE TO IMPLEMENT BILINGUAL PROGRAMS IS WITHOUT MERIT

According to defendants, any inadequacies in the nature or coverage of their programs are the result of limitations imposed by 1) the need to maintain flexibility in approach and the need to experiment, for the purpose of meeting the individual needs of plaintiffs, 2) the limited supply of trained personnel, and 3) budgetary constraints.

Flexibility and experimentation are important elements in any productive educational process, but do not justify imposing programs upon children which are admittedly less effective than other programs. In other words, defendants should be flexible and experiment with more effective, not less effective programs.

Defendants assert that flexibility and experimentation result in a variety of programs which are necessary to "address the needs of affected students". The implication, of course, is that defendants' eleven programs fulfill this undisputed goal. Any assertion that defendants have determined the specific needs of plaintiffs, or that programs have been arranged throughout the City's schools in a systematic way to meet these individual needs, is untrue. Twice in the course of this lawsuit, defendants have attempted to discover by way of surveys what happens to Hispanic children in their schools. They do not know where programs are in operation, the substance of those programs, and who is receiving them. Whether a child receives a particular one of the eleven programs is not based upon his particular needs, but rather on the fortuitous availability of that program in the child's school. The vacuity of defendants' argument is demonstrated by their convenient silence on their method of determining needs, and which of the eleven programs meet which needs. Simply put, defendants are not meeting the specific needs of plaintiffs. Defendants have admitted, time after time, that in their "expert judgment" bilingual education is necessary for plaintiffs, but it remains unavailable to the vast majority of them.

Next, defendants claim that lack of trained personnel impedes the expansion of their programs. As pointed out in plaintiffs' May 20 Memorandum, once jobs are made available, recruitment of trained personnel is made easier, and qualified personnel will become available. It is unreasonable to expect potential teachers and other school personnel to participate in bilingual education training if the Board offers only a limited number of bilingual education positions.

"It is all too obvious" that it is not the need for flexibility and experimentation, nor the lack of trained personnel that prevent the implementation of bilingual programs. Insufficient funding by the City is the major obstacle.[22]

> An additional and all too obvious limitation on any programs of the Board of Education is that imposed by the realities of budget constraints. Limited funds must be used to meet the Board's many legal and educational responsibility.[23]

Past and present budget requests have not only been substantially pared, but the requests, themselves, have been insufficient. For example, in requesting a $14.5 million increase for bilingual education which defendants characterized as "vital" and among their "highest priorities", defendants stated that the increase "is pitifully small when it is compared with the needs of the students."[24]

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22. As former Chancellor Harvey B. Scribner stated:

> The students of Puerto Rican backgrounds get some help in their schools in this city, but not enough on a city-wide basis. It is not because their teachers are callous and insensitive, or because their fellow students have deliberately appropriated their share of opportunity. It is simply that this city, like most cities, has a way of finding many seemingly good reasons for not providing in the schools a full measure of what every child needs: a full chance to learn. Partly it is a matter of insufficient funding, and partly a matter of vision. (emphasis added). *See*, Defendants' Answer, Exhibit A, pp. 5-6.

23. Defendants' Memorandum, p. 9.

24. Board of Education, Budget Estimate for, 1974-75 (Dec. 28, 1973) p. 11.

Defendants now disclose for the first time in this lawsuit that the Mayor has reduced that "pitifully small" amount to $11 million *to be shared by children with English language difficulty and handicapped children*. More drastic reductions will inevitably occur before the Board of Estimate, as has happened in the past.[25] Any dispute between the parties must be viewed, therefore, in the context of the allocation of requisite funds for bilingual programs which all agree, and have stated, are necessary.

That a school system is required to allocate whatever funds are necessary to eradicate unequal educational opportunity is beyond dispute. When a violation of federal law is found, particularly when invidious discrimination is involved, it is the duty of the court to design the most suitable and effective remedy regardless of cost. As stated by this Court in *Justice* v. *Board of Education*, 351 F.Supp. 1252, 1263 (S.D.N.Y. 1972), "the rights given by paramount federal law are not to be nullified because it costs money to honor them." *See*, *Shapiro* v. *Thompson*, 394 U.S. 618, 633 (1969); *Watson* v. *City of Memphis*, 373 U.S. 526, 537-38, (1963); *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *See also*, *Palmer* v. *Thompson*, 403 U.S. 217, 226 (1971); *Goldberg* v. *Kelly*, 397 U.S. 254, 261, 266 (1970).

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[25] In school years 1972-73, and 1973-74 defendants' budget requests were reduced by in excess of 90 and 50 percents, respectively.

CONCLUSION

Defendants' programs, except for bilingual education, are inadequate to meet the standards of *Lau* v. *Nichols*, *supra*, HEW, or the defendants' own standards.

Dated: New York, New York
May 31, 1974

Respectfully submitted,

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D. Memorandum of Understanding in *Martinez* v. *Santa Maria Independent School District*, C.A. No. 73-B-35, S.D.Tex., June, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

RAMONA MARTINEZ, ET AL.)
)
PLAINTIFFS)
)
) CIVIL ACTION NO. 73-B-35
VS.)
)
SANTA MARIA INDEPENDENT)
SCHOOL DISTRICT, ET AL.)
)
DEFENDANTS)

MEMORANDUM OF UNDERSTANDING

Whereas the Plaintiffs in the above styled and numbered cause have instituted the instant cause of action to insure equal educational opportunity for themselves and the members of their class, all of whom are students at schools operated by Defendants La Feria Independent School District and Santa Maria Independent School District.

Whereas the defendants receive substantial amounts of federal monies to implement and administer their curriculum and receive such funds pursuant to their compliance, "with Title VI of the Civil Rights Act of 1964....and all requirements imposed by or pursuant to /HEW/ regulations."

Whereas the Supreme Court of the United States in Lau v. Nichols, 42 U.S.L.W. 4165 (January 22, 1974) approved HEW clarifying guidelines relating to language deficiencies, which include the following:

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered

> by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.
>
> Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent tract.

Whereas the defendants have instituted action by and through the assistance and guidance of the Office of Civil Rights of the Department of Health, Education and Welfare, to insure equal educational opportunities for the Spanish-speaking students who attend their public schools, and to accord with Lau v. Nichols, supra, Title VI of the Civil Rights Act of 1964 and HEW regulations pursuant thereto,

Therefore, in compromise and settlement of the claims of Plaintiffs against the Defendants, Plaintiffs and Defendants do hereby agree and stipulate that:

1. None of the below mentioned stipulations shall be or be considered evidence of any admission or adjudication that such defendants have violated or are now violating any laws, regulations, guidelines, contracts or assurances.

2. The defendants shall implement the bilingual/bicultural program embodied in this agreement as follows.

3. In order to ensure safeguards against the educational exclusion of any child enrolled in the Santa Maria and La Feria Independent School Districts a plan of bilingual/bicultural education will be developed and implemented in said districts to commence in the 1974-75 school year. The goal of the bilingual/bicultural plan will be the educational success of each non-English speaking child through permitting that child to learn to speak, to read, to write and to think in his mother tongue; the continued development of the Spanish language while the child learns English; and the involvement of the whole community in the planning, operation and evalua-

tion of the bilingual/bicultural program. To achieve these goals the defendants shall implement a plan employing the following principles:

A. The basic concepts initiating the child into the school environment will be taught in the dominant language of the child.

B. Language development, listening, speaking, reading and writing, will be provided in the child's dominant language.

C. Children will not be introduced to reading in English before they have learned to read well in their mother tongue.

D. Subject matter and concepts will be taught in the child's dominant language in grades K-12 thus enabling the child to meet with classroom successes and develop a positive self-image.

E. Language development will be provided in the child's second language beginning with teaching in listening and speaking skills in the second language.

F. After the child has become literate in his own language subject matter and concepts will be introduced in the second language.

G. Special attention will be given to develop in every child a positive identity with his cultural heritage through incorporating the history and culture of Mexican-Americans into all phases of the curriculum K-12.

4. A timetable will be developed for extending and implementing a bilingual/bicultural education plan for all Spanish-speaking children as follows:

A. During the 1974-75 school year all children in grades K-4 will be presented a bilingual/bicultural instructional program which utilizes the child's mother tongue as the medium of instruction as proficiency in additional languages are developed according to the foregoing principles. This should include:

(1) The maximum student-teacher ratio shall be 15:1 except that the student-teacher ratio may be 20:1 where a native-speaking teacher's aide is assigned to the classroom;

(2) Team teaching and small group methodologies such as those which presently characterize the open classroom concept will be utilized;

(3) Development of curriculum materials and methodologies to reflect a culturally pluralistic instructional approach;

(4) Evaluation and subsequent modification of all instructional materials for the removal of all stereotyping historical misrepresentations and other negative cultural presentations;

(5) Implementation of English as a second language and as part of the instructional program;

(6) Implementation of individualized and small group instructional activities for meeting specific learning needs of individual children or groups of children;

(7) utilization of bilingual/bicultural staff specialists in diagnostic roles for the development of prescriptive teaching;

(8) initiation of comprehensive staff development activities responsive to the implementation of these strategies;

B. By the 1975-76 school year all children in grades 5-6 will be presented a bilingual/bicultural instructional program which accepts the child's mother tongue as the language of instruction while one or more additional languages are developed. For 1974-75 this shall include:

(1) Initiation of English-as-a-second-language strategies on a prescriptive basis for students diagnosed to need additional English language development;

(2) Development or adaptation of instructional materials to ensure reinforcement of both the languages and the various cultures represented in the student body;

(3) Continuation of English-as-a-second-language instruction on a prescriptive basis.

D. During the 1974-75 and 1975-76 school years the program elements enumerated for grades 5-6 will also be developed and presented in grades 7-8 with the additional element of implementation of a comprehensive counseling program using bilingual/bicultural personnel, aimed at decreasing the drop-out rate and increasing both the availability of academic options for students preparing to enter high school and their receptivity to such options.

E. By the 1975-76 school year (and sooner if practicable) a program will be developed for high school students which allows for continuation in the child's mother tongue of the bilingual/bicultural instructional program of grades K-8 and which includes:

(1) The immediate implementation of instructional and non-instructional activities which respond to the pluralistic characteristics of the student population, provide sequence and continuity to earlier instructional activities and respond to the motivational sytles and socio-economic constraints of students from differing socio-economic and cultural backgrounds;

(2) The development of an instructional program including course offerings, instructional materials, and methodologies which respond to and capitalize on the needs and capabilities of students who have been involved in bilingual/biclutural education. This shall be accomplished by implementation of at least the following:

(a) Assignment of bilingual/bicultural diagnostic staff specialists among testing and evaluation personnel;

(b) Assignment of bilingual/bicultural personnel in the guidance and counseling program of the school;

(c) Assignment of one bilingual/bicultural teacher to implement English-as-a-second-language instruction on a prescriptive basis;

(d) Development of an intensive program to identiy scholarships and financial assistance for disadvantaged and all other students, with priority to be given to disadvantaged students.

(e) Modification and expansion of literature and social studies curricula to reflect pluralistic characteristics of the student population; provide cultural reinforcement, and historical, anthropological and sociological accuracy;

(f) Modification and expansion of home economics curriculum to respond to the life styles, family structures and needs of children in all cultures represented in the student body;

(g) Assignment of bilingual/bicultural personnel to coordinate development and implementation of literature, social studies and home economics programs;

(h) Initiation of ethnic studies courses;

(i) Evaluation of vocational education and home economics programs in terms of (1) relevance of offerings to current community needs and projected needs and (2) the maintenance of student-centered decision making as to options within and without vocational education;

(j) Assignment of a bilingual/bicultural High School Curriculum Development Director whose duty shall be to develop an instructional program, including course offerings, instructional materials and methodologies which respond to and capitalize on the needs and capabilities of students.

F. In addition to the timetable set forth above the defendants shall prepare comprehensive procedures and a detailed organizational system designed for the implementation of the bilingual/bicultural plan outlined therein. These procedures and the organizational plan shall include:

(1) Definitions of roles and mechanisms for the coordination of the various elements of the school district which have responsibility for delivering services critical for the effective implementation of the plan.

(2) More detailed timetables for implementation which delineate steps to be taken throughout the two-year implementation period.

(3) Definition of internal procedures for accountability (personnel, fiscal) and evaluations.

(4) Mechanisms for reporting, including the retrieving, compiling and evaluation of program data.

G. As a crucial element of the bilingual/bicultural plan embodied in this document there shall be created a Community Bilingual/Bicultural Committee composed of parents, school staff and community representatives chosen as follows:

(1) Four parents of children in the bilingual/bicultural program of the Santa Maria Independent School District and four parents of children in the bilingual/bicultural program of the La Feria Independent School District grades K-8 to be elected by the parents of children in the bilingual/bicultural programs of those districts;

(2) Four parents of children in the bilingual/bicultural program of the La Feria High School, of whom two shall be parents of children who attended elementary school at the Santa Maria Independent School District. These parents shall be elected by the parents of children in the bilingual/bicultural program of the La Feria High School.

(3) Two bilingual/bicultural staff members nominated by the defendants.

(4) Such other community representatives as the parent and staff members of the committee shall choose.

(5) As part of its bilingual/bicultural plan the defendants shall specify the date for elections to the Community Bilingual/Bicultural Committee (hereafter CBBC), the method for disseminating information concerning the election including plans to notify each parent in Spanish and English of the elections, the use of Spanish language newspapers and media, and the selection of a time, place and method for conducting the elections which ensure the widest possible community participation.

(6) It shall be the responsibility of the CBBC to participate fully in every phase of the bilingual/bicultural plan including the planning, implementation and evaluation of such plan, to convey information concerning the bilingual/bicultural program to the community and to solicit information and grievances, if any, from parents and other community people, and to carry out such other duties as set forth in this agreement.

(7) The CBBC shall designate such sub-committees as it sees fit to enable it to carry out its functions under the plan.

(8) It shall be the responsibility of the defendants to assist the CBBC by educating its members as to the basic concepts of effective educational planning, operation and evaluation, by explaining fully the operation of the bilingual/bicultural program, by providing all information which the committee needs to enable it to carry out its functions and by cooperating generally with the committee in its work.

(9) The defendants shall specify in their plan what steps and procedures will be employed to carry out their responsibilities under (8) above.

H. The defendants shall notify, in writing in Spanish and English, all parents of children in the bilingual/bicultural program that their children are in the program. The notice shall contain a simple, non-technical description of the purposes, method and content of the program and shall inform the parents that they have the right to visit the bilingual/bicultural classes, the right to a further conference with school officials concerning the program, the right to discuss the program with the CBBC, the right to examine and copy their children's individual school records and should they so desire, the right to withdraw their children from the program.

5. Staff - Development and Recruitment Plans

A. A staff development plan will be formulated which sets forth a timetable for implementation and a detailed description of all staff development activities including pre-service workshops, in-service workshops, practice teaching, and required course work.

(1) The staff development plan will increase the capabilities of the staff to respond to the needs of non-English speaking students and all other students.

(2) The staff development plan will include as minimum components the following:

(a) Direct involvement of community representatives in planning, implementation, monitoring and evaluation. This will be accomplished by involvement of the CBBC in all phases of the staff development plan.

(b) Involvement of school personnel from all levels on an equal basis in planning, implementation, monitoring and evaluation.

(c) Appointment of a full-time Staff Development Plan Coordinator. The CBBC should work with the Superintendent in developing the job description for this position and concur in the selection of the Coordinator.

(d) Initiation of a system-wide staff training program developed through joint staff and community effort.

(3) The staff training program should include the following:

(a) Cultural awareness training that will include School Board members, key community leaders, administrative staff, teaching personnel, counseling and guidance personnel and parents.

(b) Curriculum development to meet the needs of all children.

(c) Pupil diagnosis, prescriptive teaching and behavior modification strategies.

(d) Bilingual, oral language assessment and ESL training.

(e) Team teaching and differentiated staffing.

(f) Tests and measurements techniques for measuring bicultural student performance.

B. Beginning with the adoption of this agreement defendants shall commence immediate and intensive efforts to recruit minority group staff at the professional, para-professional and non-professional levels.

(1) The defendants shall initiate a Special Career Development Program. This program will provide and support the identification, multiple-level entry and placement of Mexican-Americans into all levels of the school system (i.e., administrative, supervisory, pupil personnel services, guidance and counseling, teaching and other supportive staff).

(2) The Special Career Development Program will be development jointly by the school district and the CBBC and will include as minimum components:

(a) Specific selective criteria which reflect the need for competent bilingual/bicultural supervisory, administrative and teaching personnel who are sensitive to the needs of all children.

(b) A time schedule which specifies a minimum increase in the Mexican-American professional staff by five percent each year over the next five years and is designed to bring minority employment to an equitable level at the administrative, supervisory and teaching levels, eventually reflecting the percentage of minority students in the district.

(c) A plan for disseminating information on specific selection criteria to all levels of the system and the community including Spanish language notices in newspapers, radio and television.

(d) A plan for recruiting at universities.

(e) A plan for identifying potential candidates for positions in the bilingual/bicultural program from persons currently employed by the school systems. This should include plans to upgrade and re-train persons currently employed who may be able to perform at new positions within the bilingual/bicultural program.

(f) A plan to assist persons within the community who currently lack education career credentials to obtain such education and training as may be needed for their own advancement into the field of bilingual/bicultural education.

(3) All persons who are to be considered for employment in the bilingual/bicultural program will be interviewed by the CBBC. The superintendents shall give heavy weight to any recommendations concerning future employment which may be made by the CBBC following the interview and in no case shall offer employment to a candidate whom the CBBC feels would not be an appropriate person to work in the bilingual/bicultural program.

6. The defendants shall develop an effective procedure to identify and evaluate non-English speaking children, such procedure to include a comprehensive screening procedure involving oral interviews in Spanish and English by bilingual/bicultural personnel and appropriate standardized tests designed to assess the child's reading and writing abilities in Spanish and English. Such assessment is an on-going process and must include those children already in the school system for whom no such assessment has been conducted.

A. Parents shall receive in writing in both Spanish and English the results of the pupil assessment and must be informed of their opportunity to discuss the assessment with the staff of the bilingual/bicultural program.

B. Parents shall also be informed that they may discuss any questions concerning the assessment of their child with the CBBC.

C. Further assessments shall be made upon the requests for such assessments by any parent or by the CBBC acting at the request of the parents of any child.

7. Evaluation Plan and its implementation:

A. The defendants shall develop a comprehensive evaluation plan for all components of the bilingual/bicultural program described hereinbefore. Said plan shall set forth the goals of each component and measurement techniques to be employed in determining whether those goals have been met.

B. The CBBC shall be involved in developing the evaluation plan both with respect to establishing goals to be met and in choosing appropriate measurement techniques to determine implementation. The CBBC shall also participate in carrying out the evaluation plan.

(1) The CBBC and its members shall have full access to all records and other data needed to evaluate the success of the bilingual/bicultural program.

(2) The defendants shall furnish to the CBBC any additional reports or data which the CBBC may from time to time request for the purposes of this subsection.

(3) The defendants shall make available to the CBBC upon request such technical educational expertise as the CBBC needs to participate fully in making evaluations of the bilingual/bicultural program.

(4) Evaluations conducted by the CBBC shall be considered as part of the comprehensive evaluation of the bilingual/bicultural program.

C. The defendants shall not continue any component of the bilingual/bicultural program for which the evaluation indicates a lack of educational success and for which discontinuation is recommended by the evaluators.

8. Special education:

A. There shall be implemented a special education concept which discontinues labeling and categorizing children, shifting the emphasis from the handicapping condition to the educational needs of each child and assessing his individual needs and programming his education accordingly, and changing the emphasis from the self-contained special class to mainstream or regular education facilities.

B. In conducting the special education program no test device or technique using the English language or developed for or normed on primarily English-speaking populations shall be used as part of the process of evaluating any child whose primary language is other than English.

C. The committee that makes final assignemnt of students to special education classes shall include at least one Mexican-American teacher and one Mexican-American parent who shall be a member of the CBBC.

9. Other than to effectuate the purposes of this plan the percentage of minority students in each class will not deviate by more than ten percent from the percentage of minority students in any grade as a whole.

10. That this action be dismissed without prejudice, provided nevertheless that the Plaintiffs may apply to this Honorable Court for such appropriate further relief as they may hereafter deem necessary.

DATED: June , 1974

E. Response to the Mandate of *Lau* v. *Nichols* by Citizens Task Force for Bilingual Education (excerpts), January 21, 1974

WORK OF THE TASK FORCE FOR BILINGUAL EDUCATION

On May 14, 1974, The San Francisco Board of Education authorized the Superintendent to appoint a Citizens Task Force for Bilingual Education to develop a "Master Plan for Bilingual Education with special emphasis being given to designing a program in response to the Lau vs. Nichols decision." That same day, the Board further authorized $15,000 to retain the Center for Applied Linguistics "to provide technical assistance in the preparation of a Master Plan to be presented to the Board and the Court in the case of the Lau vs. Nichols decision."

On May 17, 1974, the Federal District Court to which the Supreme Court remanded the Lau vs. Nichols case approved the above procedures set up by the Board of Education with the understanding that the Task Force for Bilingual Education will work cooperatively with both the plaintiffs and the U.S. Department of Justice, representing the U.S. Department of Health, Education and Welfare as an interested party.

Composition of the Task Force

Following the Board action, the Superintendent immediately appointed fifty citizens from the major language communities to the Task Force to devise a district-wide Master Plan for Bilingual Education. In addition, each member of the Board of Education named an appointee to the Task Force, pursuant to the Board resolution. With the consent of the Superintendent's Office, the Task Force decided to recontitute itself to increase its effectiveness and efficiency and to assure fair and adequate representation by all parties concerned with the plight of the non English and limited English speaking students. It was agreed that each of the four major language groups (Chinese, Filipino, Japanese and Spanish languages) would have five representatives. Of the five from each group, two would be parents with children in existing bilingual programs, one parent with a child in the public school and two representatives of the language community-at-large. Five additional seats would be set aside for representatives of other language groups such as Samoan, Korean, Hindi, etc. Unfortunately, despite active solicitation for their participation only one of the five vacant seats was filled. The six appointees of the Board, (one of the commissioners never named an appointee), were added to the Task Force. It was further decided that each member of the Task Force may designate an alternate. As it turned out, only a few members did.

The Task Force, therefore, has a total membership of twenty-seven; five from each of the four major language communities in San Francisco and seven appointed by the Board members. It should be pointed out that three out of the four language groups have either Anglo or black parents among their five representatives. Even though the Task Force was created to address itself solely on the question of non-English and limited English speaking students in San Francisco as required by the U.S. Supreme Court, the composition reflects in fact the school population of San Francisco.

Organization of the Task Force

Two types of committees were formed within the Task Force. First, there were ethnic or linguistic caucuses. These caucuses were necessary to better articulate the particular needs and interests of each language group and to facilitate a direct link between the Task Force and the language communities in San Francisco. For example, needs assessment, goal identification and community education were first identified by the language caucuses. Moreover additional community input was assured through these caucuses.

The second type of committees was task-oriented. Throughout the planning process, many tasks had to be done efficiently through committee system. For example, each report or document prepared by the Center for Applied Linguistics was first screened or scrutinized by a committee and then brought before the full Task Force for further scrutiny and final approval. Sometimes, the Task Force approved something in principle and authorized one of the committees to work out the details. Without exception, each of these committees was represented by one person from each language group.

A Steering Committee, also consisting of one representative from each language group, was set up to provide planning direction, to represent the Task Force in various capacities, to develop preliminary studies and to carry out the mandates of the Task Force. Without exception, all decisions of the Steering Committee were subject to the final approval of the full Task Force.

Minutes of all Task Force meetings, including the committees, were kept. In addition, entire Task Force meetings were taped.

Even though all meetings were public, the Task Force was particularly concerned about the input of teachers who eventually will have the responsibility of implementation of the Master Plan at the classroom level. A Teachers Advisory Committee to the Task Force was set up to assure continuous participation of teachers. The Teachers Advisory Committee had access to all documents of the Task Force and were urged to attend all meetings of the Task Force. The Task Force was pleased to have the active participation of a number of teachers through out the planning process.

The Task Force held regular meetings once every two weeks with committee and caucus meetings in between regular meetings. Since December 1974, a week scarcely went by without at least two to three meetings related to the various activities and committees of the Task Force.

Needless to say, the Task Force had the support and the cooperation of the district staff and the Center for Applied Linguistics.

Guiding Principles of the Task Force

From its inception, the Task Force was painfully aware of the importance of its work and the importance of developing a plan that will meet both the requirement of the U.S. Supreme Court and the needs of the students of limited English speaking ability. The Task Force was also cognizant of the fact that any plan must reflect the local situation. In the preparation of the Master Plan, therefore, the following basic conditions figures prominently:

A. The discriminatory practices in the San Francisco Unified School District, as established by the U.S. Supreme Court on January 21, 1974 in the Lau vs. Nichols case, can be remedied only through the development and implementation of a comprehensive educational plan designed to maximize compatibility with and responsiveness to the characteristics and needs of the culturally and linguistically heterogenous students population in the School District.

B. The Master Plan, therefore, must seek to rectify existing inequalities in the treatment and educational outcomes between English speaking and limited English speaking children in a way that is compatible with the general and culture-specific goals and aspirations of various groups within the San Francisco community. On the one hand, the Master Plan must be devoid of those educational practices which current research and thought indicate having potentials for inflicting physical or psychological harm on groups or individuals within the population. On the other hand, it must embody innovative approaches to providing meaningful and comprehensive full-time instructional program for all children of limited English speaking ability.

C. The Master Plan, in addition, must be consistent with those local, state and federal policies requiring school integration.

D. The Master Plan must also include time-line projections for schieving specific objectives in the plan. Projected dates for achieving these objectives must meet the basic criteria of reasonableness, given the School District's resources, extant and anticipated.

The Task Force considers the recommended plan completely consistent with the conditions set forth above.

* * *

NEEDS ASSESSMENT AND DISTRICT EFFORTS TO DATE

Needs Assessment: Preliminary Data and Methodological Problems

The ethnic composition of students in the San Francisco Unified School District has been undergoing rapid changes. In 1972-74, the School District had a total student enrollment of 78,023, K through 12. The racial distribution is as follows:

	Number	Percentage
White	21,001	26.9%
Black	23,794	30.5
Chinese	12,315	15.8
Spanish-surname	11,131	14.3
Filipino	5,715	7.3
Japanese	1,304	1.7
Koreans	394	.5
Native Americans	266	.3
Other Non-White	2,103	2.7

Among the "Other Non-Whites" are Samoans, Arabic, Hindi, Burmese, Vietnamese, Pacific Islanders and others. This means that the School District had 73.1% students from minority backgrounds.

In 1974-75 academic year, the total enrollment dropped to 73,040, reflecting a continuing decline from 93,205 five years ago. This figure represents a net loss of 20,165 students or 21.6% in the past five years. Five years ago, the School District had 58.9% minorities.

School statistics in the past five years, therefore, indicate that the dramatic decline occurred mostly among the white student population. Among some of the minority groups, notably the Asian groups, especially the Filipino and Koreans, the trend actually has been the exact opposite. The influx of new immigrants from East and Southeast Asia and the court-ordered school integration since 1971 no doubt play a significant role in the changing composition and enrollment of the School District. In fact, court records on Lau vs. Nichols showed an average net gain of 80 limited English-speaking students per month or gaining 960 per year. A quick comparison of the total number of limited English-speaking children between 1969 and 1973 vividly confirms this reversed trend. In 1969, the School District reported 5,269 limited English speaking students. The number increased to 9,084 in 1973, or an increase of 72.4% in four years. Among these 9,084, 3,457 are Chinese, 2,980 Spanish-speaking, 1,519 Filipino, 202 Japanese, 179 Samoans, and 747 other languages. Both immigration policy and government statistics to date point to a continuation of the patterns established since 1965. In short, the School District must reasonably expect the number of limited English-speaking children to increase steadily at the same rate as in the past.

In spite of this well-established trend, the School District reported a total of 6,511 limited English speaking students in April, 1974, an unexpected and unexplained drop of 29% in one year. According to school data, 2,330 Chinese, 1,860 Spanish-speaking, 1,076 Filipino, 187 Koreans, 151 Samoans, 124 Japanese and 782 other languages made up the 6,511 figure. Subsequently, in a testimony before the Ways and Means Committee of the California State Assembly on December 10, 1974, Raymond del Portillo, Director of Bilingual Education Division gave testimony which further reduced the 6,511 total to 4,911 limited English speaking students, representing a net reduction of almost 100% between 1973 and 1974. The unexplained reduction from 9,084 in 1973 casts serious doubts on both the results and methods of the annual survey of students of limited English speaking ability. A closer examination of the raw data indicates that the initial computation in May 1974 yielded a figure slightly above 9,000 – a figure more consistent with the well-established trend of the last few years.

The conflicting figures underscore the importance of developing a more objective, consistent yardstick to conduct the annual State mandated census (California Education Code 5761.3). For the time being, these figures are highly suspect. A check on the enumeration methods revealed that figures were arrived at by totalling the subjective judgment of some 2,500 classroom teachers, a method of questionable standarized character or scientific value. A culturally unbiased and linguistically sound device for detecting language proficiency must be developed to assess those students and to make precise determination on student placement and to devise appropriate educational program best suited their needs. If such a device or test could not be formulated for each of the language groups immediately, an increasingly favored method across the nation, and recently incorporated into the new Federal laws on bilingual/bicultural education, ought to be utilized. Instead of relying solely on individual teachers' impressions, which are necessarily non-standarized and subjective, as it has been done in

San Francisco and elsewhere, a simple question on each child's home language is use to provide the preliminary identification of his or her language proficiency. A more thorough linguistic and academic assessment then follows. This method, in fact, was used by the School District in 1972 and the outcome showed that there were 20,000 students whose primary languages were other than English. As part of the Master Plan, the Task Force is recommending that a centralized assessment and counseling center with sub-divisions be established and the latest methods be used to conduct the annual census and to prescribe educational programs accordingly for students of limited English speaking ability.

To improve on the last census, taken in April 1974 amidst a teachers strike, a new survey is now underway to provide the Task Force with a more accurate assessment of needs to finalize the Master Plan. The new data, of course, will be included in the final Master Plan to be submitted to the Board in February 1975.

District Efforts to Meet the Needs to Date

What has been the San Francisco School District's response to date to meet the needs of the limted English speaking students? We propose to examine these efforts in terms of the educational programs, the allocation of District funds for these programs, and the hiring of qualified bilingual personnel. In terms of programs available to limited English speaking students, the Spring 1974 survey indicated the following:

	ESL	BBE	No Help	Total
Chinese	1,138	193	1,000	2,330
Spanish-speaking	604	454	802	1,860
Filipino	524	49	503	1,076
Japanese	70	4	50	124
Korean	144	2	41	187
Samoan	50	2	98	151
Other Languages	423		359	782
TOTAL	2,953	704	2,853	6,611

Of the 6,511 limited English speaking students in 1974, 2,953 were getting English As A Second Language of 40 minutes of "ESL pull-out" a day, 704 were receiving full bilingual/bicultural education programs and 2,853 were getting no assistance at all. Since all classes, with the exception of the few bilingual classes, are conducted solely in English, and since a normal school day has six classes, it is reasonable to assume that the limited English speaking students in the ESL pull-out program are excluded from the full educational benefit in five out of these six classes a day. It is not difficult to imagine what the 2,853 students receiving no help at all are getting out of their schooling. Therefore, of the conservatively estimated 6,511 limited English speaking students in 1974, only 704 of them were getting comprehensible education out of attending schools daily. The rest were getting either minimal or no benefit whatsoever, as the U.S. Supreme Court unanimously ruled in Lau vs. Nichols.

Turning now to the cost of providing these programs for the limited English speaking students, we rely on the following data made available by the Division of Research in March 1974.

District Programs, 1973-74		
Administration of Bilingual Office	$ 50,688	
Chinese Program (plus Ed. Center)	975,122	
Spanish Program (plus Ed. Center	948,414	
Filipino Program (plus Ed. Center)	283,282	
Japanese Bilingual Program	40,290	
ESL Program at McAteer	140,338	
Total: District Programs		$2,438,134
Total: Federal and State Funded Programs		982,391
GRAND TOTAL: All Programs (District, State & Fed.)		$3,420,525

The SFUSD figures on the surface show a substantial increase of expenditures towards the limited English speaking students, from $809,168 in 1968-69 to $2.4 million in 1973-74, excluding the $982,390 from State and Federal sources. However, a closer examination on how the district channels its funds into the various programs reveals that only a small portion of this $2.4 million goes into support of some of the bilingual program and the rest is used for hiring of teachers for ESL Pull-Out and ESL oriented newcomers program. Whatever funds has been made available to start any bilingual program has consistently come from non district sources. For example, the district has four bilingual-bicultural programs:

Chinese Title VII Bilingual (1 - 6)
Chinese Bilingual Program (7 - 9)
Spanish Title VII Bilingual Program (K - 6)
Japanese Bilingual Program (K - 3)

The district's contribution to these bilingual programs is limited to one teacher, not necessarily with bilingual competency, for each bilingual class. In addition, the district also receives funds for bilingual/bicultural programs under AB 2284 (State) and ESAA Bilingual Set-Aside (Federal) to set up a few classes and to support other ESL programs.

As pointed out above, only 704 students of limited English speaking ability are enrolled in the state and federally funded programs. Integration mandate provides approximately the same number of students of other races in these programs.

To give a clearer picture of how the district contributes to either the State or Federally supported bilingual programs, we would like to cite the Chinese Title VII Bilingual Program as an example. This program is providing full-time instruction to 15 classes of children from first to sixth grade at three different schools. The pilot program was initiated five years ago with a Federal grant. Among the conditions of the grant were: the program must be bilingual/bicultural, the district must provide a teacher for every classroom, the program would expand by one grade every year and Federal support would terminate at the end of six years. So, the program started with one bilingual class at grade one at the Commodore Stockton Elementary School. Now in its sixth and last year, the program consists of 15 classes, grades 1 - 6. The classes, fully integrated, are distributed among the following elementary schools: 6 classes (1-3) at Commodore Stockton School, 6 classes (4-6) at Patrick Henry School, and 3 classes (4th grade only) at the St. Mary School. The following chart shows the funding sources for the 15 classes:

District Funds	Federal Funds
12 Classroom Teachers	1 Project Manager
(7 have bilingual competency)	3 Curriculum Writers
	1 Resource Teacher
	1 ESL Teacher
	5 Teachers Aides
	1 Calligrapher
	1 Clerk-Typist
	3 Teachers Aides from AB 2284
	2 Teachers Aides from CETA

It is obvious from this chart that the district's contribution to start and support this modest program is restricted to classroom teachers. Of the 12 classroom teachers, seven are bilingual and five are not. The budget for these 12 positions comes out of the $975,000 allocated by the District for the Chinese Bilingual Program.

Similarly, of the 6 district-supported positions in AB 116 Chinese Bilingual Program at the Marina Junior High School, only two have bilingual competency. Other positions on the staff of AB 116 are all funded by AB 116 or AB 2284.

A major point the Task Force wishes to make is that a substantial portion of the $2.4 million in the district budget for the Bilingual Department in 1973-74 actually went into the ESL Pull-Out and ESL oriented programs and that the district's contribution to start and maintain State and Federal bilingual programs has been minimal and restricted to teaching positions. Even then, not all teachers recruited for these bilingual programs are bilingual.

The same pattern prevails in the 1974-75 budget: $2,544,459 from the district (or an increase of about $100,000 from previous year), $259,982 from State and $1,598,658 from Federal sources. The substantial increase in Federal funds was the result of additional funds from the Emergency School Aid Act (ESAA) and the Comprehensive Employment and Training Act (CETA). It should be pointed out that, of the current $1.8 million Federal and State funds, perhaps only $382,000 could be assured for next year. This means that the bilingual/bicultural programs could be terminated on short notices, unless the district commits itself to continue them with its own funds, the "hard monies". It is not our intention here to conduct a detailed study on the funding structure of all the language programs in the school district. For additional information on this subject, see "Preliminary Report to Dr. Lane E. DeLara on Bilingual/ESL/Newcomer Staff Response to Implications of Lau vs. Nichols", prepared by Michael Kittredge on April 3, 1974. It is clear from this well assembled document that the district lacks direction of how best to meet the educational needs of students of limited English speaking ability and is void of any plans to coordinate and evaluate its multitude of fragmented programs. Programs are set up not on the basis of needs and effective planning; they are established because certain Federal or State funds for various purposes happen to be available. As a result, programs proliferated as funds flowed in from different and varying sources and assorted purposes and programs may be terminated if their funding sources dry up.

Related to the effectiveness of any program is the teacher who has the responsibility to provide full-time instruction to students of limited English speaking ability. The need for teachers who can communicate with students and therefore, teachers who are bilingual/bicultural is self-evident. A look at the teaching personnel indicates that the district now has more than 10,000 employees serving its 73,040 students today. Five years ago, it had 6,206 employees serving 93,204 students. Of the current employees, 4,572 are teachers, reflecting a net gain of 174 teachers from 4,398 in 1969-70. In terms of teacher-student ratio, we now have one teacher for every 24.5 students, or a drop from 25.4 five years ago. As for the ethnic compostion of the teaching staff, a recent survey shows the following: 73% White, 11% Black, 5% Spanish-surname, 6% Chinese, 2% Japanese, 2% Filipino and 1% Native American - a completely reverse proportion to the ethnic composition of the student population. Five years ago, the school district had 79.9% white teachers. Herein lies the difficulty of recruiting and hiring qualified bilingual teachers desperately required to provide the kind of education needed by students of limited English speaking ability. Aggressive recruitment of bilingual teachers must take place while meaninful re-training opportunity is being extended to the existing teachers. Reducation of teacher-student ratio and opportunity for early retirement are certainly avenues to be explored if the school district were to increase its pool of bilingual teachers.

Our sketchy program and budget analysis demonstrated clearly a serious contradiction between district policy and implementation. On March 16, 1972, the Board of Education committed itself to provide bilingual/bicultural education to students of limited English speaking ability (Resolution 23-16-Sg 5). Our review indicates that less than 10% of such students are now receiving bilingual/bicultural education, over 30% are getting no help at all, and the remainder (55.3%) are deriving only minimal benefit, one out of six classes a day, through the ESL pull-out.

Furthermore, the Board, through its budgetary decisions, has consistently failed to commit district funds for bilingual/bicultural education. Instead, it has allowed bilingual/bicultural programs to exist mostly on Federal and State funds. Presently, the district contributes less than 3% of its own $148 million budget toward bilingual/bicultural programs. Faced with these glaring contradictions, we must inevitably conclude that the district has thus far assigned a very low priority to the educational needs of children of limited English speaking ability.

Perhaps the most disturbing part of our inquiry is the indifference shown in the budget decisions. As we mentioned above, the school enrollment dropped 21.6% in the past five years. However, there has been no comparable decline, in fact with increases in some cases, among students from language backgrounds other than English. During this same period, we note with distress that the district budget increased from $120 million to $148 million a year, or the cost per student rose a spectacular 58%, from $1,286 to $2,035. If we use a rough estimate of 10,000 limited English speaking students in the district, the amount of money appropriated for meaningful bilingual education programs in surrent year should be at least $20 million instead of the $2.5 million cited above. This discrepancy alone contradicts the frequent claim by school officials that the bilingual program has been instrumental in inflating the cost of public education. If our limited English speaking children are not getting the full benefit of public education, as the Supreme Court ruled, then it is clearly the responsibility of the Board to make sure that they do so, and to see that district funds are used properly to achieve the kind of educational results expected by the U.S. Supreme Court.

RATIONALE

The failure of traditional educational systems to provide equal and quality education for children of limited and non-English speaking ability has become more and more evident in recent years. These failures are reflected in the following statistics and findings[1]:

50% of Spanish-speaking students in California drop out by the 8th grade.

87% of Puerto Ricans over 25 years of age in New York City have not completed high school; and 57% of Spanish-speaking students drop out before graduation.

The average number of school years completed by the Mexican-American in the Southwest is 7.1 years.

In Boston, over half of the 10,000 Spanish-speaking school-age children are not in school at all; in 1972, only nine Spanish-speaking graduated.

In Chicago, the dropout rate for the Spanish-speaking is approximately 60%.

Across the nation, thousands of limited English-speaking children have been placed in classes for mentally-retarded children.

In 1972 in Atlantic City, New Jersey, with a very large Spanish-speaking population, there were no Spanish-speaking graduates.

In San Francisco in 1973, a representative sampling of over 2,000 non-English dominant Chinese students who took the Primary Cooperative Tests indicated that they had achieved a median grade equivalent score of 1.9; that score, as a measure of their reading ability, put them in the lowest percentile of all ethnic groups who participated in the district-wide testing program.

In San Francisco, with 73.1% of district students from minority backgrounds and with 8.5% of district students who are limited or non-English speaking, reading score achievement is the lowest in the state of California.

In San Francisco, of the conservatively estimated 6,511 limited and non-English speaking students in the district in 1974, 2,953 were receiving 40 minutes a day of English as a Second Language pull-out treatment; only 704 were receiving full bilingual/bicultural education programs; and 2,853 were receiving no assistance at all.

For San Francisco and the nation, the U.S. Supreme Court has ruled that limited and non-English speaking students have no equality of treatment when merely provided with the same facilities, textbooks, teachers and curriculum provided to native speakers of English.

The Citizens Task Force for Bilingual Education and the Center for Applied Linguistics (Arlington, Virginia) find the following remedial approaches in and of themselves, as practiced in San Francisco and nation-wide, to be totally inadequate and ineffective.

1. THE SINK OR SWIM APPROACH: This approach, most abusive and irresponsible, assumes that students of limited and non-English speaking ability can function adequately in English-only classes without any assistance.
2. ESL PULL-OUT APPROACH: The sole objective of giving a 40 minute ESL class to each limited or non-English speaking child each day is to make him or her more competent in English. Use of the child's native language is withheld and no effort is made to provide continued instruction in other subjects in a language that the child can understand until the child is fully able to learn these subjects in English.
3. REMEDIAL READING: This program addresses itself solely to one narrow aspect of the language problem of limited and non-English speaking children, poor reading achievement, and in no way provides for improvement in listening, speaking and writing abilities in English or for alterations in the school curriculum or allows for special training of teachers to meet the specific needs of these children.

The Citizens Task Force for Bilingual Education, with the highest recommendation of the Center for Applied Linguistics, therefore proposes a comprehensive bilingual-bicultural educational program[2] for all children of limited and non-English speaking ability in the SFUSD. A bilingual-bicultural education program (BBE) is defined as a full-time program of of instruction in which two languages, one of which must be English, are used as mediums of instruction with full appreciation of the history and cultural heritage of these children. The program is designed to develop and reinforce their self-esteem and to foster a legitimate pride in both languages and cultures.

The Task Force's recommendation for BBE is based on the following well-established and sound educational principles[3].

1. That the primary means by which a limited or non-English speaking child learns is through the use of such child's native language and culture;
2. That using the native language to teach other subjects allows the education of the child to continue uninterruptedly from home to school, thus preventing his retardation in subject matter while he learns English;
3. That teaching a child to read first in the language he brings with him when he enters school facilitates his learning to read and write in a second language because the basic skills of reading and comprehension are generally transferable from one language to another;
4. That curriculum which incorporates the student's familiar experiences, community, history, and cultural heritage will help build pride and self-confidence in the student, and by being more relevant to the student's personal experiences, heightens his interest and motivation in school;
5. That by integrating the language and cultural background of all students, bilingual-bicultural education reinforces and increases the communication between home and school, and between different ethnic groups, thus improving the student's motivation and achievement and reducing inter-racial misunderstanding.

Furthermore, the Task Force recommends the BBE approach because it has been demonstrated to be the most appropriate and effective means of providing equal education to children of limited and non-English speaking ability. Examples of the success of BBE programs can be found nation-wide:

Bilingualism in the Barrio (Fishman 1971) speaks of the healthy personal attitudes Puerto Rican children in mainland schools when in an educational program which accepts their language and culture.

Project Frontier (Chula Vista, California 1968-present) has found that in schools where bilingual programs are operant, the identity problems of children have decreased, and knowledge of the mother tongue and semantic development in it have increased cognitive development. The self-concept of the child was enhanced; learning took place at accelerated rates and attitudinal changes were evident in the perseverance to learning.

Mabel Wilson Richardson (1968) reported as follows concerning the Coral Way School in Miami, Florida: "The Bilingual Program of study was relatively as effective for both English and Spanish-speaking subjects as the regular curriculum. In achieving progress in the language arts and in arithmetic..... it must be noted here that, in addition to performing as well as the control group in the regular curriculum, the English-speaking pupils were learning a second language and Spanish-speaking pupils were learning to read and write their native language."

Hostetler and Huntington (1971) compared standardized test scores of Amish children in bilingual schools with area children in other schools and found the scores of the Amish children significantly higher.

The statistical evidence from the largest survey of education ever conducted, James Coleman's Equality of Educational Opportunity cannot be ignored. The survey correlated academic achievement with attitudes such as student self-concept, sense of control over his fate and interest in school. The study concluded that these attitudes and feelings are more highly correlated with how well a student achieves academically than a combination of many of the factors which educators have usually thought were crucial, such as class size, training of teachers, facilities and curriculum.

In Philadelphia in 1968 a study was conducted in which all Spanish-speaking children in the city were tested in their mother tongue with standardized tests in reading. The children tested in this group either migrated from a Spanish-speaking area or were children of parents who had migrated. This group provided some baseline of pre-program performance against which current performance of Spanish-speaking children could be judged. This same testing procedure was replicated in the

> city's bilingual-bicultural program. Results showed that performance of Spanish-speaking pupils was substantially greater than that of baseline, suggesting that the bilingual program had enhanced performance of the pupils. (Robert M. Offenbert, Evolution of a Bilingual Evaluation 1973)

> Berth Alicia Gamez Tervino (1968) found that children in Nye School, United Consolidated School District, outside Laredo, Texas, both English-speaking and Spanish-speaking, learn mathematics better bilingually (in English and Spanish than they do in English alone).

And even more importantly, examples of BBE program success are currently being demonstrated within the San Francisco Unified School District itself.

> Students in SFUSD's AB 116 Chinese Bilingual-Bicultural Program in the 1973-74 school year. Six criterion-referenced and two standardized tests were used to measure student progress. The criterion-referenced tests, developed by project staff for the junior high school level, included a California History Test, a Chinese Literature Test, a U.S. History Test, a Chinese-English Concept Test, and Oral Production of English Test, and a Science Test. The standardized tests were the Stanford Achievement Tests in reading (English) and math (translated into Chinese). Highly significant student growth was made from pre-assessment to post-assessment. Pupil growth in written English -- word meaning and paragraph meaning-- improved substantially. As measured by the SAT, their entry-level scores at the beginning of the 7th grade were equivalent to second grade third month in reading ability. During the school year three students moved into the regular instructional program (two made the honor roll); and the remaining students raised their reading ability to thrid grade, seventh month level on the average.

> The affective component in AB 116 was assessed through the use of two questionnaires, one for students and one for parents. Students were very supportive of their bilingual-bicultural classes. Three-fourths of them felt that they could understand their lessons better when the teachers used both Chinese and English. Seventy percent said they liked to speak both English and Chinese in class. Eighty-three percent said they had made good friends in school, and about the same percentage said that they spoke with their friends in both Chinese and English at different times as required.

> The parent's attitudes toward the AB 116 bilingual-bicultural program were highly positive. Three-fourths of them felt their child had made good progress since entering the program. Eighty percent felt that their child's social adjustment had improved. The same number felt their child's use of English, math competency, and knowledge of U.S. history had all improved.

> The 1972-73 Final Evaluation Report on the SFUSD's Spanish/English ESEA Title VII Bilingual-Bicultural Project was particularly significant. Assessment instruments included standardized tests and criterion-referenced tests. The tests utilized were the Inter-American Series, Test of Reading; the Inter-American Series Test of General Ability, and the Instructional Objective Criterion-Referenced Test. Two other instruments utilized were the Bilingual Classroom Observation Record and the Instructional Objective Teachers Monitoring Form. Pre and posttests were administered to project students in grades K-4.

> Of particular interest was the Inter-American Test of Reading which was administered in Spanish and English as a pretest and posttest measure of children participating in the bilingual-bicultural project at the second, third, and fourth grade levels. The Test of Reading, designed to assess reading and vocabulary comprehension, consists of subtests in reading level, reading speed, and vocabulary. The results were startling.

> At every level, in every case, there were significant and measured gains for Spanish Dominant children. In every case, the Spanish Dominant children demonstrated significant improvement (range of improvement: 9.4% to 37.2%) when the test was given in Spanish. In nearly every case, those same children demonstrated a substantially faster learning rate in English (range of improvement: 35.2% to 75.5%). In the fourth grade, which was the exception, measured improvement was substantial and nearly equal in both languages.

> The bilingual-bicultural approach proved equally valuable for English Dominant children. Again, at every level, there were significant and measured gains for English Dominant children. In every case, English Dominant children demonstrated significant improvement (range of improvement: 7.4% to 35.2%) when the test was given in English. In nearly every case, those same children demonstrated a substantially faster learning rate in Spanish (range of improvement: 4.9% to 286.0%).

> Since the top priority of this project is to reduce the academic disparity between minority children and their majority counterparts, the implications of this testing are immense. These

tests show that in a strong bilingual-bicultural program, students can make substantial academic gains in their native language, whatever language dominance prevails. And, more importantly, those same students can also make substantial academic gains in their second language at a significantly faster rate.

The 1973-74 Annual Evaluation Report on SFUSD's Chinese/English ESEA Title VII Bilingual-Bicultural Project was also significant. Two criterion-referenced and two standardized tests were used to measure student progress. The criterion-referenced tests, developed by project staff for fourth grade level tested included Chinese as a Second Language and a Chinese reading and writing test. The standardized tests were the Cooperative Primary Test and the Comprehensive Test of Basic Skills (CTBS).

The results of these tests showed uniformly significant growth during the year in both Chinese oral language usage and Chinese reading and writing skills at the fourth grade level. The standardized tests showed that project children on the average were scoring slightly below average in reading and somewhat above average in mathematics. The evaluation group, Evaluation Associates, stated: "Considering the wide variability among ESL and CSL children in their initial language capabilities, these results are remarkably good and very encouraging."

The affective component was assessed through the use of two questionnaires, one for parents and one for students. These questionnaires were given to all students in grades 1-5 and to their parents. Project children in general were quite favorable toward the bilingual-bicultural learning program. Eighty-one percent like to speak Chinese; about three-fourths like to speak and learn English. Only 32% like the teacher to use only English in class; and only 24% prefer that the teacher use only Chinese. About three-fourths of all children stated they were happy in school and happy living in San Francisco.

The results of the parent survey were uniformly positive. Most parents felt their child was getting a good education and that their child was learning about Chinese cultural heritage. They felt that their children were friendly with children from different cultural backgrounds. Most parents were very positive in their feeling that "school seems to be helping my child like himself more than before," and that "my child seems to be very happy in school."

SB 1335, Moscone: This bill establishes the Bilingual-Crosscultural Teacher Preparation and Training Act of 1973. It requires the Commission for Teacher Preparation and Licensing to develop status reports on or before January 15th of each year and to make such reports available to the Legislature by February 15th of each year regarding public bilingual-crosscultural programs and a five-year projection of needs. This bill requires the Commission for Teacher Preparation and Licensing to design career ladder programs and to provide grants to allow bilingual aides to become fully certificated bilingual teachers; and, in conjunction with public institutions of higher education, to design comprehensive language and cultural curricula for teachers who are already certificated, to enable teachers to qualify for the bilingual-crosscultural specialist credential and to institute such a curriculum.

AB 2817, Chacon: This bill enacts the Bilingual Teacher Corps Program under which the Superintendent of Public Instruction is directed to implement a program providing an annual $1,500 stipend, plus necessary expenses, to teacher aides while pursuing an approved educational program leading to a teaching credential; it also authorizes the Superintendent to contract with local educational agencies and the California State University and Colleges for the training of such teacher candidates.

Finally, it needs to be underscored that the Master Plan for Bilingual-Bicultural Education is based on the specific model selected and recommended by the Center for Applied Linguistics for implementation. The following diagram describes the models for possible selection (see next page). For a complete explanation of the BBE selection model developed by the CAL, see the appendix to Installment Six of the Master Plan pp. 1-19.

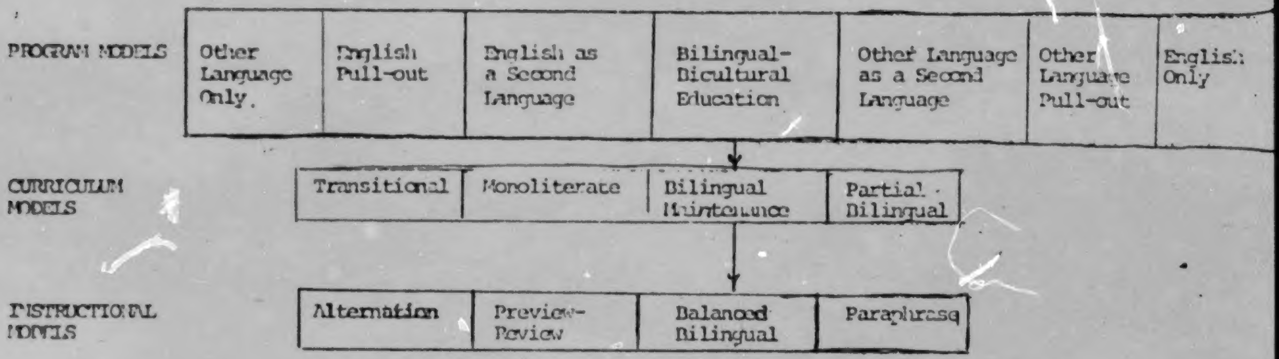
FOOTNOTES

[1] U.S. Civil Rights Commission, Toward Quality Education for Mexican Americans; U.S. Senate Committee on Labor and Public Welfare, Education Amendments of 1974: Report, March 29, 1974; U.S. Senate Subcommittee on Education, Hearings on Education Legislation, 1973, Part 7, Oct. 31, 1973; U.S. House General Subcommittee on Education, Hearings on Bilingual Education Act, March 12 to May 10, 1974; U.S. House Civil Rights Oversight Subcommittee of the Committee on the Judiciary, Hearings on Education of the Spanish speaking, June 8 to 14, 1972.

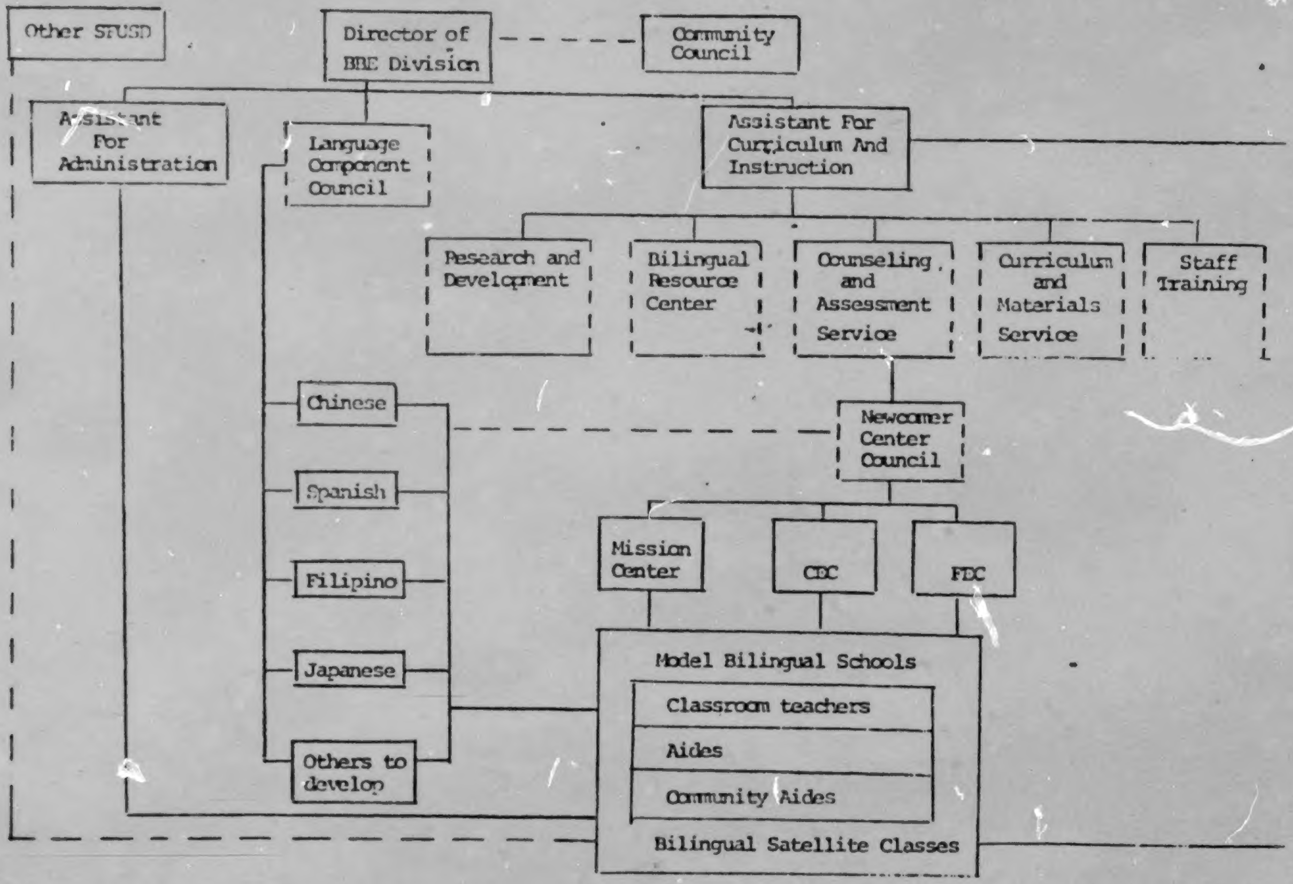
[2] Center for Applied Linguistics, Installment Six of Master Plan, Appendix pp. 1-19.

[3] CAL, installment One of Master Plan, pp. 43-6; see references.

BBE SELECTION MODEL


PROGRAM MODELS
Other Language Only.
English Pull-out
English as a Second Language
Bilingual-Bicultural Education
Other Language as a Second Language
Other Language Pull-out
English Only
CURRICULUM MODELS
Transitional
Monoliterate
Bilingual Maintenance
Partial Bilingual
INSTRUCTIONAL MODELS
Alternation
Preview-Review
Balanced Bilingual
Paraphrase

CAL RECOMMENDATION: "By far the most efficient decision making involves selecting the Bilingual-Bicultural Program Model, the Bilingual Maintenance Curriculum Model, and the Balanced Bilingual Instructional Model. The Center for Applied Linguistics highly recommends these selections."


Other SFUSD
Director of BBE Division
Community Council
Assistant For Administration
Language Component Council
Assistant For Curriculum And Instruction
Research and Development
Bilingual Resource Center
Counseling and Assessment Service
Curriculum and Materials Service
Staff Training
Chinese
Spanish
Filipino
Japanese
Others to develop
Newcomer Center Council
Mission Center
CDC
FDC
Model Bilingual Schools
Classroom teachers
Aides
Community Aides
Bilingual Satellite Classes

ORGANIZATIONAL CHART

V. Desegregation and Bilingual-Bicultural Education

In many instances, issues of racial desegregation and bilingual-bicultural education arise in the same case. For example, of the cases cited in Part II, United States v. Texas, United States v. Board of Education of Waterbury, Morgan v. Kerrigan, Evans v. Buchanan, Morales v. Shannon, Keyes v. School District No. 1, and Bradley v. Milliken involved both kinds of claims.

There is some tension between an adequate bilingual-bicultural program and student desegregation including all racial and ethnic groups. In the decision on August 11, 1975, by the Tenth Circuit in Keyes, the court invalidated a portion of the district court order under which five elementary schools were left with minority enrollments ranging from 77% to 88% in part because of "the institution or continuation of bilingual-bicultural programs." The court of appeals stated:

> Given our reversal, infra, of the district court's adoption of the Cardenas Plan, institution of that Plan cannot justify continued segregation of any of the noted schools. Bilingual education, moreover, is not a substitute for desegregation. Although bilingual instruction may be required to prevent the isolation of minority students in a predominantly Anglo school system, see Lau v. Nichols, 414 U.S. 563; Serna v. Portales Municipal Schools, 10 Cir., 499 F.2 1147, such instruction must be subordinate to a plan of school desegregation.

Slip Op., p. 32.*

Other cases and materials suggest, however, that the goals of bilingual-bicultural education and desegregation can be harmonized. In Morgan v. Kerrigan, the Boston school desegregation case, the court, as part of the remedy, ordered compliance with the Massachusetts Transitional Bilingual Education Act,** which reads in part as follows:

> In those courses or subjects in which verbalization is not essential to an understanding of the subject matter, including but not necessarily limited to art, music and physical education, children of limited English-speaking ability shall participate fully with their English-speaking contemporaries in the regular public school classes provided for said subjects.

Mass. Gen. Laws Ch. 71A, §5; see also Vernon's Texas Code Annotated, Education Code, §21.454(b).

There is some confusion with respect to federal statutes and regulations bearing on this issue. The Equal Educational Opportunity Act of 1974 in Section 1703(f) provides

> No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by...
>
> (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

Similarly, the August 1975 HEW memorandum discussed in the Introduction encourages meaningful steps to overcome language barriers. See pp. 225 to 238, infra. However, a regulation on eligibility for funding under the Emergency School Aid Act seems to disapprove of a program "which results in any separation of minority group from nonminority group children for more than 25 percent of the school day classroom periods...." 45 C.F.R. §185.43(c).

This section contains two items: a memorandum critiquing desegregation plans filed by the Hispanic intervenors in the Boston school desegregation case, Morgan v. Kerrigan, and an article by Jose A. Card[illegible]s titled "Bilingual Education, Segregation, and A Third Alternative," which is reprinted from 19 Inequality in Education 19 (February, 1975).

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[*] The relevant portions of the Keyes opinions appear at pp. 50, 52, supra.

[**] See Morgan, p. 47, supra.

A. Memorandum, Proposal, and Critique of Plaintiffs-Intervenors filed on February 3, 1975, by Hispanic Intervenors in Boston school desegregation case

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * * * * * * * *

TALLULAH MORGAN, et al,
Plaintiffs

and

EL COMITE DE PADRES PRO
DEFENSA DE LA EDUCACION
BILINGUE, et al,
Plaintiffs-Intervenors

vs.

JOHN KERRIGAN, et al,
Defendants

C.A. No. 72-911-G

* * * * * * * * * * *

MEMORANDUM, PROPOSAL, AND CRITIQUE OF PLAINTIFFS-INTERVENORS

PRELIMINARY STATEMENT

On January 23, 1975 this Court granted the motion of El Comite de Padres Pro Defensa de la Educacion Bilingue, and representative individual Hispanic school children attending the Boston Public Schools, and their parents, to intervene at the remedial stage of these proceedings for the limited purpose of protecting their state and federal rights to an equal educational opportunity.

Hispanic school children have a substantial and distinct interest in the outcome of this litigation. They seek to secure the preservation of viable bilingual education programs mandated under the State Transitional Bilingual Act, and federal law and regulations, in a manner consistent with the dismantling of segregation in the Boston public schools.

Plaintiffs-intervenors offer a plan necessary to protect these rights, which is substantially in accord with the aims of the plan submitted by the plaintiffs, yet which is at the same time sensitive to the special language and cultural needs of Hispanic school children, needs disputed by none of the parties in this action.

HISPANIC STUDENTS ARE A DISTINCT ETHNIC GROUP

Under federal statute and for purposes of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, Puerto Ricans and other Hispanic persons are identifiable ethnic groups. Hernandez v. Texas, 347 U.S. 475 (1954); United States v. Texas Education Agency, 467 F.2d 848 (5th Cir. 1972) (en banc); Cisneros v. Corpus Christi Independent School District, 467 F.2d 142 (5th Cir. 1972) (en banc), cent. denied, 413 U.S. 920 (1973); See also Chance v. Board of Examiners, 458 F.2d 1167 (2d Cir. 1972); Castro v. Beecher, 459 F.2d 575 (7th Cir. 1972); Puerto Rican Organization for Political Action v. Kusper, 490 F.2d 575 (7th Cir. 1973). The City defendants' classification of Puerto Ricans and other Hispanos as black or white is repugnant to the teachings of this substantial body of law, in addition to being inaccurate and insensitive, by separating members of this group, often members of the same family, on the basis of skin pigmentation when the relevant criteria which identifies Hispanos is their distinct culture and language. At the outset, therefore, this Court must reject the City defendants' method of characterizing plaintiffs-intervenors as black or white Spanish surnamed and treat Hispanos as a distinct ethnic group for purposes of protecting their rights.

PLAINTIFFS-INTERVENORS RIGHTS UNDER STATE AND FEDERAL LAW

Any plan implemented to protect the rights to equal educational opportunity of the plaintiffs in the Boston public schools must, at the same time, insure the protection of the federal and state statutory rights of the plaintiffs-intervenors. Accordingly, the integration of the Boston public schools can be, and must be consistent with the rights of Hispanic children as guaranteed by section 601 of the Civil Rights Act of 1964, 42 U.S.C. §2000d which prohibits the defendants, as recipients of federal funds, from discriminating "on the grounds of race, color, or national origin." Pursuant to its authority under section 602 of the Civil Rights Act, the Department of Health, Education, and Welfare (HEW) promulgated rules, regulations and clarifying guidelines which mandated that school systems, such as defendants', "assure that students of a particular race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system." 33 CFR §4955 (1968). To clarify further the obligations of federally funded school systems regarding their affirmative duties to meet the educational needs of non-English dominant school children, HEW issued guidelines as follows:

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.
>
> 35 Federal Register 11595 (1970)

The importance of these federal obligations was emphasized by the Supreme Court of the United States in Lau v. Nichols, 94 S.Ct. 786 (1974), in which the Court found that the San Francisco school system had violated the rights of 1,800 Chinese dominant Asian-American students by failing to implement curricula designed to guarantee them a "meaningful opportunity to participate in the educational program." Id. at 788. In ordering the San Francisco defendants to come forward with such curricula, the Court observed:

> We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

Since the Supreme Court's decision in Lau, the federal courts have not hesitated to order bilingual programs to protect the equal educational rights of Hispanic students. See e.g. Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974); Aspira of New York v. Board of Education of the City of New York, 72 Civ. 4002 (August 29, 1974).[1]

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[1] On August 29, 1974, after the Court (per Frankel, J.) ordered the New York City Board of Education to apply its expertise to protect the federal rights of the Puerto Rican and other Hispanic plaintiffs, the parties entered into a consent decree mandating bilingual education as well as the development of instruments and tests, and affirmative hiring necessary to implement the program by September 1975 throughout New York City.

Two years prior to Lau, a prescient Massachusetts legislature, recognizing its responsibilities to take affirmative steps to ensure an equal educational opportunity to students whose primary language is other than English, enacted Chapter 71A of the State Education Law (the "Transitional Bilingual Education Act") which constituted an important first step toward meeting the educational needs of a substantial portion of Hispanic children in the schools in the Commonwealth, including those in Boston.[2] That legislation states, inter alia, that any child of limited English-speaking ability who is incapable of performing ordinary classwork in English is entitled to a full time bilingual education program. Each school district, such as the City defendants', containing at least 20 children of limited English ability who are of a particular language classification (e.g. Spanish), must provide instruction in: (i) all legally required subjects in the child's native language; (ii) reading and writing in the child's native language as well as oral comprehension, speaking, reading, and writing English; and (iii) the history and culture of the country, territory, or geographic area which is the native land of the parents. Thus, for purposes of securing the rights enunciated by the United States Congress, HEW, and ultimately the Supreme Court in Lau v. Nichols, supra, the Commonwealth of Massachusetts has moved forward and adopted a bilingual program.

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[2] Other states which have enacted bilingual legislation, of one form or another, include Alaska, Arizona, Colorado, Illinois, Louisiana, Michigan, New Jersey, New Mexico, Texas and Florida.

These specific rights to a bilingual program tailored to meet the educational needs of Spanish dominant children are entirely consistent with the rights of plaintiffs to a school system free from segregation. The plaintiffs' plan and the City and State defendants' plans, respectively, acknowledge that the ultimate desegregation of the Boston public schools must consider the rights of the children in bilingual programs.

Numerous courts faced with tri-ethno-racial populations in the context of school desegregation have demonstrated that effective bilingual programs are a necessary part of any desegregation plan designed to protect the equal educational rights of Hispanic children. For example, the Final Judgment and Decree, dated April 17, 1974 of the District Court in Keyes v. School District No. 1, 413 U.S. 189 (1973), reh. denied, 413 U.S. 921, required, inter alia, that the Denver defendants "develop a bilingual-bicultural educational program." The Court further ordered that five schools be designated for pilot bilingual programs. In United States v. Texas (Austin Independent School District), civ. no. 73-3301 (W.D.Tex. filed August 1, 1973) the Court included in its directive that Hispanic students be provided "a

curriculum and special educational program such as bilingual-bicultural education..." Similarly, in Arvizu v. Waco Independent School District, 373 F.Supp. 1264 (W.D.Tex. 1973), aff'd in part, rev'd as to other issues, 495 F.2d 499 (5th Cir. 1974) the Court ordered the implementation of a plan that provided for bilingual-bicultural education:

> For the 1973-74 school year, the School District will implement a more sophisticated bilingual-bicultural program. In order to accomplish this, the District will utilize available Mexican-American consultants and will continually reevaluate the bilingual program.

Id. at 1280

Moreover, while relief in Lau is still in the process of formulation, any bilingual plan will be implemented in a city already under a desegregation order. Johnson v. San Francisco Unified School District, 339 F.Supp. 1315 (N.D. Col. 1971).

Plaintiffs-intervenors' position is even more compelling than those plaintiffs in the above cited desegregation cases where courts undertook to order bilingual-bicultural education, where none existed before, as part of the affirmative relief for Hispanic children. Here, plaintiffs-intervenors are merely asking this Court to refrain from diluting or stunting the growth and effectiveness of bilingual programs already in the offering. In ordering the desegregation of the Boston public schools to secure the equal educational opportunity for plaintiffs, this

Court cannot and need not jeopardize or otherwise adversely affect the present bilingual programs in Boston which constitute but a first step in securing the educational opportunity of plaintiffs-intervenors.

BILINGUAL EDUCATION IS A RESPONSE TO EDUCATIONAL DEPRIVATION

The Hispanic community in Boston has increased dramatically from the 1,200 counted in 1960[3] to an estimated 17,949 in 1972[4] and continues to grow by approximately 1,500 each year.[5] This sharp growth in the Hispanic community is reflected in the rapid rise in the number of Hispanic children attending the Boston public schools. The numbers of Spanish surnamed school children rose from 2,516 in 1968[6] to 6,143 in 1974.[7] Of the 75,413 children presently enrolled in the Boston public schools, these 6,143 Spanish surnamed students constitute 8.2%. The 4,446 Hispanic children who are categorized as receiving bilingual education programs, comprise 72.8% of the

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3. A Report by the Task Force on Children Out of School, "The Way We Go to School": The Exclusion of Children in Boston," Beacon Press (Boston), 1971.

4. County and City Data Book, 1972, A Statistical Abstract Supplement, U.S. Dept. of Commerce, Bureau of the Census, pp. 702-3. Estimates offered by governmental and non-governmental sources other than the Bureau of Census range as high as 32,000. See "The Way We Go to School," supra at 16.

5. "The Way We Go to School," supra.

6. "The Way We Go to School," supra. at 15.

7. Student Desegregation Plan of December 16, 1974 submitted by the Boston School Committee, at 111-3. It should be noted that geocode printouts submitted as part of the December 16, 1974 plan indicates that the total number of Spanish surnamed students in the Boston public schools is 6,319, in the following grades: 235 in K_1 and K_2; 3,894 in grades 1-5; 1,270 in grades 6-8; and 920 in grades 9-12

total Hispanic enrollment.[8]

The history of past neglect of the Hispanic school aged children by the Boston public schools prior to the introduction of the bilingual education programs is well documented. Between 1965 and 1969 only four Puerto Rican students graduated from the Boston schools out of an estimated Hispanic student population of 7,000.[9] Of the estimated 2,500 Hispanic children enrolled in the Boston public schools in 1969, 250 were in the senior high schools, and fewer than 10 graduated from the Boston high schools in June 1970.[10]

Between 2,650 and 7,800 Spanish speaking school age children in Boston in 1969 were out of school. Not only were thousands of Hispanic school children never registered,[11] but thousands of others were literally driven away from the Boston public schools[12] and joined what was becoming an army of dropouts.[13] The tragic educational plight of the Hispanic dropout reflected the academic retardation suffered by those children attending school. The achievement levels of Hispanic students were two or three years behind their age level;[14] over 75% of the Hispanic children were held back academically in school; and, only 13% were in their proper grade.[15] The social and economic consequences of the educational deprivation inflicted on the Hispanic community is apparent. The Hispanic community in Boston lives in the worst, most overcrowded

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[8] Memorandum from the Bilingual Education Department of the Boston public schools to the Bureau of Transitional Bilingual Education of the Commonwealth of Massachusetts, dated December 12, 1974.

[9] "The Way We Go to School," supra. at 17.

[10] Cronin, Joseph M. and Richard M. Hailer, Organizing an Urban School System Diversity: A Study of the Boston School Department, The Massachusetts Advisory Council on Education, at 151 (1970).

[11] "The Way We Go to School," supra. at 18.

[12] Cronin, supra, at 154.

[13] See Testimony of Armando Martinez, founder of PUENTE Fund, Inc., United States Congress, Senate Equal Educational Opportunity. Hearings Before the Select Committee on Equal Educational Opportunity, Part 8, November 23, 24 and 25, 1970, Washington, D.C., United States Government Printing Office, pp. 3707. See also City Defendants' Plan, January 27, 1975, IV-101.

[14] The Commonwealth of Massachusetts, Department of Education, Bureau of Transitional Bilingual Education, "Two Way" (A Summary of the Transitional Bilingual Education Act).

[15] Vorhauer, Delia, "A Profile of Boston's Spanish Speaking Community: Characteristics and Attitudes," Association for the Promotion of the Constitutional Rights of Spanish Speaking (APCROSS) and Massachusetts State Department of Education, Migrant Division, compiled by Boston Community Development (ABCD), April, 1969.

housing, has the highest unemployment rate and the lowest income of any identifiable minority group in the city.[16]

Confronted with these unassailable facts documenting the denial of an equal educational opportunity to the Hispanic child, the Commonwealth legislature unanimously passed the Transitional Bilingual Education Act. This legislation was a necessary response to this unlawful educational deprivation. Any retreat from these initial advances or any diminution of the quality of existing programs will not only trigger violations of state and federal rights, but will retard the quest of Hispanic children for effective education and its concomitant economic and social benefits.

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[16] Adriana Gianturco and Norman Cronin, Boston's Spanish Speaking Community: Findings of a Field Survey (Boston, Mass.: Action for Boston Community Development, Inc., February 1973), pp. 53-67; 79-81; 101-9.

DESCRIPTION OF BILINGUAL-BICULTURAL EDUCATION

Bilingual-bicultural education is by definition, among other things, a means to effectively integrate a Spanish-speaking child into both his home culture and the English-speaking culture. Most obvious, bilingual education offers a child the opportunity to develop English language skills without the by-product of academic retardation. Without the effective development of this skill, meaningful integration with either black or white children who are English monolinguals is impossible. For how can children effectively integrate if they are not able to communicate with one another? Of equal importance for purposes of integration, bilingual-bicultural education provides the child with the self-esteem necessary to successfully interact with others from all communities and backgrounds. It operates to blunt the stigmatizing effects associated with language and culture inferiority; that badge of inferiority so roundly rejected in Brown v. Board of Education, 347 U.S. 483 (1954).

Bilingual-bicultural education needs no justification in Boston since the passage of the Transitional Bilingual Act. That Act clearly recognized bilingual-bicultural education as the most effective pedagogical tool for securing equal educational opportunity for Hispanic children, and the only means of effectively integrating linguistic minorities.

The following components comprise a bilingual-bicultural program:

The Curriculum Content Areas are Taught in Spanish and the Child's Spanish Language is Nurtured

It is evident that a child who has difficulty understanding the language in which he is taught will have difficulty understanding and learning the course content. Educators agree that the best medium in which to educate such a child is his dominant language.[17] Premature introduction of the second language can lead to intellectual impairment and academic retardation which is often never overcome.[1]

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17. See e.g. "The Use of Vernacular Languages in Education, Monographs on Fundamental Education, VIII (1953); Nancy Modiano, "National or Mother Language in Beginning Reading: A Comparative Study." Research in the Teaching of English, Vol. 1., No. 2 (Spring 1966) pp. 32-43; Andersson, Theodore and Boyer, Mildred, Bilingual Schooling in the United States, Vol. I, U.S. Government Printing Office (1970), p. 44.

18. For studies dealing with cognitive retardation see Wallace Lambert and Elizabeth Peal, "The Relations of bilingualism to intelligence" in "Psychological Monographs: General and Applied, No. 546, Vol. 76, No. 27, Washington, D.C.; Richardson, Mabel W. "An Evaluation of Certain Aspects of the Academic Achievement of Elementary Pupils in Bilingual Programs," Miami, Univ. of Miami, unpublished dissertation; and especially Perry A. Zirkel, "An Evaluation of the Effectiveness of Selected Experimental Bilingual Education Programs in Connecticut," West Hartford, the Univ. of Hartford, 1972, and James Vazquez, "Measurement of Intelligence

Educational programming which fails to take this into consideration will prejudice the achievement of Spanish-

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and Language Differences," Aztlan, Vol. 3, No. 1, 1973, pp. 155-63. See also, Vera John and Vivian Horner, Early Childhood Bilingual Education (1971) XXIV, pp. 165-73; Joan T. Feely, "Teaching Non-English Speaking First Grades to Read," Elementary English (1970), 207; Anne Anatasi and Fernando A. Cordova, "Some Effects of Bilingualism Upon the Intelligence Test Performance of Puerto Rican Children in New York City," The Journal of Education Psychology, Vol. XLIV (1953), p. 3; Miles V. Zintz, Education Across Cultures (Kendall Hunt, 1969), pp. 142-3, 262, 267, 398; Northeast Conference on the Teaching of Foreign Languages, The Challenge of Bilingualism, Report of Working Committee II, in G. Reginald Bishop, Jr., ed., Foreign Language Teaching: Challenges to the Profession (1965) pp. 77-8; Madorah F. Smith, "Measurement of Vocabularies of Young Bilingual Children in Both of the Languages Used," The Journal of Genetic Psychology, Vol. 74 (1949), pp. 305-10; Ethel M. Barke and D.E. Williams, "A Further Study of the Comparative Intelligence of Children in Certain Bilingual and Monolingual Schools in South Wales," The British Journal of Educational Psychology, Vol. VIII (1938), p. 63; Theodore Andersson, "A New Focus on the Bilingual Child," The Modern Language Journal, Vol. XLIX (1965), pp. 156-60; Chester C. Christian, Jr., "The Acculturation of the Bilingual Child," The Modern Language Journal Vol. XLIX (1965), pp. 163-64; David T. Hakes, "Psychological Aspects of Bilingualism," The Modern Language Journal, Vol. XLIX (1965), pp. 220-27; Mildred V. Boyer, "Poverty and the Mother Tongue," Educational Forum, Vol. XXIX (1965), pp. 290-96.

dominant children.[19] The phenomenon of intellectual retardation which is associated with teaching Spanish-dominant children in English is not disputed by defendants since the very program they have designed in accordance with the Transitional Bilingual Act is intended to meet the educational problems confronted by Spanish-dominant students in English only classrooms.

In order to insure that a child's abilities in the language of instruction are developed as he progresses in his class work, bilingual education includes the nurturing of the child's dominant language. Of course, a bilingual program, by exposing a student to instruction in,and the nuturing of his Spanish language, accomplishes far more than thwarting academic retardation. It permits a child to become proficient in Spanish while developing his English language skills, enabling him to function effectively in two languages for purposes of relating to two cultures which constitute his daily reality. Moreover, the academic and intellectual advantages of fluency in two languages is apparent, as is its value in a competitive job market.

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[19] The International Institute of Teachers College, A Survey of the Public Educational System of Puerto Rico, Columbia University, Teachers College, New York Bureau of Publications (1926). It should be noted that although certain Puerto Rican children enter the school with underdeveloped skills in reading and writing Spanish, their Spanish skills are certainly better developed than their English skills and should be used as learning tools.

The English Language Component

It is essential for a Spanish-dominant child to master English. This competence can and must be developed without sacrificing or demeaning the child's dominant language.[20] Accordingly, the English language component must be designed as a part of the bilingual program and not as a curriculum independent of, or unrelated to the other component. The development of a child's Spanish language abilities and his English language abilities should be considered and implemented as mutually supportive and not as conflicting educational processes.

The teaching of English is usually divided into four skill areas: speaking, listening, reading and writing. But these divisions are conceptual rather than sequential, so that the English language program represents an elaborate integration of the four skills into classroom instruction. Study skills, literature, and "body language" are often included. Orientation to the child's English-speaking community, particularly to the school environment, is fundamental.

Moreover, the English language component should be a part of the over-all effort of the bilingual program to promote a child's gaining an awareness of and respect for the differences and similarities between the English speaking culture and his own. Teaching of American social customs, traditions, folklore, history and literature should be incorporated into an English language component.

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[20] See generally "Proposed Statement of Qualifications and Guidelines For The Preparation and Certification of Teachers of English to Speakers of Other Languages in the United States", presented to the TESOL Convention, Washington, March, 1972.

Puerto Rican and other Hispanic Culture is Incorporated in all Aspects of the Curriculum Program

A bilingual education program must of necessity, reflect the child's cultural heritage, as well as exposing the child to the prevailing culture forms in the United States. The child who has participated in an effective bilingual education program can be expected to participate effectively in the English speaking world as well as in his ethnic neighborhood; thus, the frequent use of program title such as "bilingual-bicultural" or culturally democratic education.

A corollary of the above is that the child will not be educated at the expense of his legitimate need to relate to his family and its values, with the resulting psychological devastation that immersion in a brain washing type of learning situation has so often entailed. Consequently, the child will be accepted for what he is, the first step in any good education.

That a cultural component is an integral part of a bilingual education program is acknowledged in the HEW

definition of bilingual education:

> Bilingual Education is the use of two languages, one of which is English, as mediums of instruction for the same pupil population in a well-organized program which encompasses part or all of the curriculum and includes the study of the history and culture associated with the mother tongue. A complete program develops and maintains the children's self-esteem and a legitimate pride in both cultures.[21] (emphasis added)

The use of Spanish is a vehicle for the maintenance of culture. Culture is inseparable from the language used to articulate it.[22] The very use of a child's dominant language inherently teaches the child to respect and value that language.[23] It allows him to develop respect and pride in the myriad social and cultural aspects ineluctably related to that language. Strong feelings of self-respect and pride that the child possesses upon his arrival at school is thus maintained.

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[21] U.S. Dep't of Health, Education, and Welfare, *Programs Under Bilingual Education Act (Title VII, ESEA): Manual For Project Applicants and Grantees* (1971), 1.

[22] Saville and Troike, *op. cit.*, 21-22.

[23] In Puerto Rico, the United States has recognized this by adopting the policy of teaching Puerto Rican children in Spanish, purportedly to encourage cultural autonomy. As the late Senator Robert F. Kennedy, in sponsoring section 4(e) of the Voting Rights Act of 1965 put it:

> In School [the typical educated Puerto Rican] reads, in Spanish, the same textbooks which his fellow citizen on the mainland reads in English. That his schooling takes place in Spanish is not up to him, but is due to the fact that the U.S. Government has chosen to encourage the cultural autonomy of the Commonwealth of Puerto Rico, to make Puerto Rico a showcase for all of Latin America. III Cong. Rec. 11060 (1965).

This positive self-image is supportive of a constructive attitude towards school and learning in general. To destroy or diminish a child's positive self-image, adversely affects his motiviation and precludes him from full and effective participation in the educational program.[24]

In addition to the use of Spanish in the schools, a program of instruction must make available to the child culturally relevant instructional materials. These materials would relate to Puerto Rican and other Hispanic folklore, artistic expression, literature and history.

But culture includes still more. What school authorities seem to often forget is that culture is acquired by direct, frequent, varied participation and experience in all aspects of the life of a group of people. A very large part of this acquisition occurs outside of the learner's awareness. Culture can only be "taught" or transmitted in the school if special efforts are made to incorporate into the curriculum, the staff, and activities as many aspects as possible of the life of the cultural group to which the learner belongs.[25]

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[23] (cont.) Of course, Puerto Ricans have been United States citizens since 1917 and, as such, have the right to freely travel to and from Boston. 8 U.S.C. Sec.1402 (1917). For schools to suppress the use of or fail to nurture a Puerto Rican child's Spanish, while the federal government mandates that that same child receive his education in Spanish before he arrives here is patently irrational as well as pedagogically absurd.

[24] Saville and Troike, op. cit., 32.

[25] National Puerto Rican Devcopment & Training Institute, Inc., op. cit., 30.

Bridges must be built between the home, the community and the school.[26] Parents must be consulted and their support and involvement sought.[27] Personnel must be aware of the cultural patterns of Hispanic children, and the differences between Hispanic and American cultural modes. Negative stereotypes of members of minority cultures too often govern the attitudes, expectations and values on teacher-child relationships.[28] If conflicts between the two cultures in these areas are not resolved, the child will be unable to function effectively.[29] In sum, the child and the school will be incompatible.[30]

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[26] See Testimony of A. Bruce Gaarder, Chief, Basic Studies Branch, Division of College Programs, Bureau of Educational Personnel Development, U.S. Office of Education. United States Congress, Senate, Bilingual Education. Hearings Before the Special Subcommittee on Bilingual Education of the Committee on Labor and Public Welfare, United States Senate, Ninetieth Congress, First Session, on S. 428, A Bill to Amend Elementary and Secondary Education Act of 1965 in Order to Provide Assistance to Local Educational Agencies in Establishing Bilingual American Education Programs, and to Provide Certain Other Assistance to Promote Such Programs. Part 1, May 18, 19, 26, 29 and 31, 1967. Printed for the use of the Committee on Labor and Public Welfare. Washington, D.C.: U.S. Government Printing Office, pp. 51-55:

> Non-English-speaking children come from non-English-speaking homes. The use of the child's mother tongue by some of the teachers and as a school language is necessary if there is to be a strong, mutually reinforcing relationship between the home and the school.

[27] Andersson and Boyer, op. cit., 62

[28] Robert Rosenthal and Lenore Jacobson, Pygmalion in the Classroom: Teacher Expectation and Pupil's Intellectual Development, (1968).

[29] Saville and Troike, op. cit., 22

[30] Cardenas and Cardenas, "Theory of Incompatabilities," Today's Education, (Feb. 1972).

THE IMPORTANCE OF CLUSTERING

Plaintiffs-intervenors recommend that there must be in each school where a bilingual program is to be established, a sufficiently large number of Hispanic children of the category whose command of English is insufficient to enable them to learn effectively in English, alone, to assure the reasonable--and if possible, optimal--effectiveness of the program. In order to maximize the program's effectiveness, the plaintiffs-intervenors propose that they be established in the schools with the largest enrollment;[31] that the minimum cluster contain at least four classes; that a cluster contain at least five classes in a school that spans grades 1-5; and, that every bilingual program should span a minimum of at least three consecutive grades.

With respect to kindergarten, children should be assigned to the school closest to their home. In the event there is a sufficient number of Hispanic children in need of bilingual education at the kindergarten level in the elementary school, a bilingual program should be introduced regardless of whether consecutive clustered classes is possible.

It should be noted that kindergarten children fall within the purview of the Transitional Bilingual Education Act.

The Response of the State Defendants to the December 16, 1974 Student Desegregation Plan of the Boston Public School System gives the basic rationale for grouping Hispanic children in bilingual programs and with that rationale the present intervenors are totally in accord.[32] The main points of the response are that there be in each school offering a bilingual program "...several bilingual classes, preferably of consecutive grade levels...[which]... gives students a greater range and flexibility and allows them to move at their own pace [resulting in]...greater motivation...and a reasonable sized cluster of bilingual classes..., which will require that the cluster be placed in the larger schools".[33]

More specifically, this sufficiently large concentration makes possible the assignment of enough Spanish-medium teachers to accommodate the notable range of individual differences found in Hispanic children. Among the Hispanic children entitled to a bilingual education are those entering the system at the kindergarten level from Boston homes in which Spanish is mainly spoken; those students who arrive from Puerto Rico and Latin America and enter Boston schools at all grade levels; and those students previously in English medium classes who are Spanish or English dominant with inadequate English achievement and who lack basic skills in either or both language because of inadequate educational experience.

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[31] The insufficiently large number of children in a bilingual program, if assigned to a small enrollment school would be equally advantageous pedagogically, but may result in a disproportionately large number of Hispanic children in such a school, impeding the interaction among white, black and Hispanic children which plaintiffs-intervenors favor.

[32] The City-Wide Educational Coalition, Inc. (CWEC) comments submitted to this Court also emphasizes the need for a "cluster" approach for bilingual educational programs and expresses the similar views of the Massachusetts Coalition for Human Rights. See City Defendant's Plan, Jan. 23, 1975, IV-104, 105,106, wherein the cluster concept is supported as necessary to meet the diverse needs of children in the bilingual program.

[33] State Defendant's Plan, Jan. 20, 1975, part III, section 3.

The range of individual differences characterized by widely disparate levels of skills and linguistic achievement necessitates this clustering of bilingual classes. The bilingual programs must be both comprehensive and flexible to deal with all of these categories of needs. The complexity of the bilingual curricula underscores the importance of team teaching and the whole cluster system. The diversity of levels that exist within the student population cannot possibly be handled adequately by one or two teachers, even if the number of students is small.[34]

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[34] The particular importance of a low student-teacher ratio for bilingual programs is attested to by the State requirement as contained in the Transitional Bilingual Education Act and its regulations for one teacher per fifteen students or one teacher plus an aide per twenty students.

If the bilingual education program is to meet the needs of individual children, it not only requires an assessment of the child's conceptual and cognitive development, but an assessment of his linguistic skills in two languages. Since the degree of English to which a child in bilingual education is exposed may well differ from subject to subject, and since children at the same achievement levels in any particular subject may be exposed to different degrees of English depending on English linguistic development, it is crucial that a bilingual educational program in a school contain a sufficiently large number of bilingual teachers and a sufficiently large concentration of bilingual children in order to meet these varied needs.

Quite rightly, the plaintiffs' plan and Boston School Committee's plan of December 16, 1974 provide for variations in educational approaches at the elementary school level which attempt to recognize and provide for "the unique needs of children at different stages of growth and development," for English dominant black and white children.[35] Similarly, to respond to the specialized multifarious needs of Hispanic children in bilingual programs, it is essential that bilingual classes be clustered.

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[35] December 16, 1974 plan, at IV-2.

Moreover, sufficiently large concentration of Hispanic children is necessary for the proper administration of bilingual programs. The dispersal and proliferation of bilingual programs not only isolates the children and teachers in those programs, but precludes their effecient and economic administration.

CRITIQUE

Introduction

Plaintiffs-intervenors' critique is almost entirely devoted to an analysis of the plan submitted by the plaintiffs. Although, as pointed out earlier, the plans submitted by the City-defendants dated December 16, 1974 and January 27, 1975 each contain items with which plaintiffs-intervenors agree, the plaintiffs' plan presents the most effective basis for achieving a desegregated school system in accordance with the directives of this Court and other controlling authorities.[36] E.g. Green v. County School Board, 391 U.S. 430 (1968); Swann v. Charlotte Mecklenberg Bd. of Ed., 402 U.S. 1 (1971). After reviewing plaintiffs' plan, plaintiffs-intervenors are confident that with the modifications suggested herein, to be supplemented as required, a unitary school system can be established while preserving the present level of

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36. As indicated infra, plaintiffs-intervenors support several points contained in the submission by the State on January 20, 1975 and other groups which are referred to herein. Not all submissions have been presented to plaintiffs-intervenors. Accordingly, the absence of any reference to other plans should not be construed as indicative of plaintiffs-intervenors' rejection or acceptance of any such plans. Plaintiffs-intervenors reject the City defendants' plans primarily because they use parent options and voluntary busing in a manner inconsistent with effective desegregation.

effectiveness and growth potential of mandated bilingual programs.

With these comments in mind, the following criticisms and suggestions should not be construed as a rejection of plaintiffs' plan. Instead, plaintiffs-intervenors seek to modify the plaintiffs' plan in order to better fulfill their undisputed rights to effective bilingual programs, while, at the same time, supporting much of the underlying methodology and all of the goals of that plan.

The Plaintiffs' Plan

The key flaw of the plaintiffs' desegregation plan is its failure to assign Hispanic students on the basis of their entitlement to receive a bilingual-bicultural education program. This flaw may be a result of the unavailability of any reliable data respecting the identity and present school assignments of those Hispanic students receiving, or who are entitled to receive, a bilingual educational program. A contemplated racial census will not provide this essential information, and, accordingly, any desegregation student assignment plan based exclusively upon race and ethnicity as reflected in the present geocode system, will not effectively protect the educational rights of the Hispanic students in bilingual programs. It is essential, therefore, that the defendants be ordered to conduct a census forthwith, which will identify, by present school assignment, those

Hispanic children presently receiving, or otherwise in need of bilingual education. Without this information, no party can present a plan which effectively considers the rights of these children.

Thus, in the absence of these statistics, for the most part, the plaintiffs' plan fails to consider and properly plan for the special educational needs of Hispanic children by first making desegregative student assignments without assurances that the child is assigned to a school with a viable, clustered bilingual program. The assignment of Hispanic school children to a specific school must follow and not precede the identification of those Hispanic children in need of the bilingual programs mandated by state and federal law. Such identification is not only mandated by the Transitional Bilingual Education Act, but it will insure a more orderly and appropriate assignment. This is particularly applicable regarding newly established bilingual programs resulting from the desegregation plan. With respect to these programs, it is critical that steps be taken expeditiously to account for space assignment, curriculum preparation, materials, and teacher orientation. Any timetable ordered by this Court must reflect these time constraints.

Under the plaintiffs' plan, substantial numbers of Hispanic students will be assigned to schools without the necessary and appropriate programs. The mechanism suggested under the plaintiffs' plan for adjusting an inappropriate desegregative assignment, and presumably ameliorating the adverse impact on the organizational structure of bilingual programs, is the hardship transfer or reassignment. The hardship transfer, a convoluted, time consuming process, places on the parent or child the burden of securing proper placement by demonstrating the need for a bilingual educational program. Bureaucratic hurdles, including obtaining permission from the present school principal, the present area superintendent, the receiving school principal and area superintendent, must be confronted to effect the transfer. This is, of course, incompatible with the Transitional Bilingual Education Act which requires that all children in need be first placed in a bilingual education program, and the parent given the option to withdraw the child only after this initial placement. The plaintiffs' plan reverses and undercuts this mandatory placement procedure, converting bilingual educational programs into an optional agreement.

For the Hispanic child entitled to bilingual education, his assignment to a bilingual program must be made when initially determining the ethnic-racial composition of any school. This is crucial to protect the mutual and respective rights of black, white, and Hispanic children, and to assure the harmonious accomodation of

'bilingual education and racial integration. The rights of the Hispanic child to bilingual education cannot, and should not be conditioned on his initiating a request for, and meeting the requirements of a hardship transfer, which could place in conflict and necessitate a choice between securing the right to bilingual education and racial balance.

The alternative to voluntary hardship transfers as suggested by the plaintiffs is reassignment. Plaintiffs-intervenors reject this two-step process as not only administratively unsound, but as unnecessarily obstructing the Hispanic child's right to bilingual education. Among other burdens resulting from this process, Hispanic students will be unnecessarily shunted about the system rather than being properly planned for at the initial stage of student assignments.

Specific examples of the adverse impact which plaintiffs' plan will cause with respect to Hispanic students are: (i) Hispanic children, presumably some of whom are entitled to a bilingual educational program,[37] are assigned to schools in which there is no class space available for the organization of a bilingual program; (ii) Hispanic students are assigned to schools in insufficient numbers to make possible even the organization of a single bilingual class; (iii) assignments of insufficient numbers of Hispanic students are made to many schools precluding the necessary clustering of bilingual classes;[38] (iv) viable clustered bilingual programs are eliminated or substantially reduced and the children dispersed throughout the system; (v) Hispanic students are assigned to schools containing too few grades (i.e. 1-2, 4-5, 5) to allow for clustered bilingual programs which span a wide range of consecutive grades, thus denying these students the concomitant benefits flowing from such programs; (vi) bilingual programs located in schools designated traditional, ungraded, or open-space, must conform to these fixed educational approaches, precluding, particularly in the traditional schools, the flexibility necessary to meet the needs, linguistic and otherwise, of the Hispanic child in these bilingual programs;[39] (vii) Hispanic children are

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[37] Since 72.8% of all Hispanic students are designated as being in bilingual-bicultural programs, Plaintiffs-intervenors can assume for purposes of this critique

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that a substantial percentage of Hispanic students assigned to virtually any school are entitled to bilingual education. This percentage is, in all probability, greater in elementary schools than in high schools. Of course, as noted above, actual assignments must not rest on such projections, but rather on the proper and necessary identification of each child receiving or entitled to bilingual education.

[38] See pp.22-5,supra.

[39] See pp.24-5,supra. While the plaintiffs' plan indicates that "does not depend on these designations and the School Committee could elect to conduct traditional programs in at least some of the ungraded or open space schools," (plaintiffs' plan at p. 8) the "definition or description of each approach remains the same as in the December 16 plan" (at p. 10).

assigned to schools without regard to the resulting proliferation of single class bilingual programs; and (viii) Hispanic students, in general, are dispersed in many schools in such insignificant numbers as to virtually isolate them and preclude them from contributing to the multi-lingual, multi-cultural component of the schools which is deemed so important by all parties.

The extent to which each of the above specific criticisms applies to each of the elementary and middle schools under the plaintiffs' plan is illustrated by the charts set forth in Appendix 1.

Bilingual High Schools

The necessity for clustering at the high school level is even greater than at the elementary and middle school levels because of the specialized nature of the high school curriculum. Such clustering will also permit the useful assignment of the necessary number of high school teachers to offer the full range of high school subjects, and to permit the optimal utilization of already scarce bilingual counselors crucial for the high school student.

Sufficiently clustered programs presently exist at Jamaica Plain and English high schools to which the Hispanic students are bused. Since the initiating and administering of a bilingual program at the high school level is of the greatest complexity, the bilingual programs at these two schools should remain. Moreover, in light of the increasing high school enrollment,[40] a third school should be selected to include a third high school bilingual program so as to avoid tipping the racial balance at Jamaica[41] and English. Plaintiffs-intervenors propose that the third site be the Brighton High School which is presently operating a small Spanish bilingual program. Thus, all Hispanic students receiving or entitled to bilingual education at the high school level will be assigned to any one of these three schools.

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[40] In the State Census of 1974, the number of Hispanic students in bilingual programs at the secondary level increased from 362 to 663 or 183%. There is a very significant increase in the category of "other" (or 18 years old and older): 1973, 56 students and in 1974, 195 students, an increase of 350%.

[41] The bilingual high school programs can account for the 75 bilingual students who will graduate this year. In one particular program, Jamaica Plain High School, there are 33 graduates; 66% of whom have studied throughout their high school years at the same bilingual program. It is essential that these programs be permitted to continue to function at least at their present level of effectiveness and that clustering be assured.

Three Schools Requiring Special Consideration

As in all other school systems, certain Boston public schools are special schools serving a unique function for the children and communities they serve. Plaintiffs-intervenors wish to invite the Court's attention to two schools--the Hernandez school and the Fenwick school--which play important roles in the education of Hispanic children with special learning needs. If the Boston public schools are to effectively meet the needs of these children, the viability of these two schools must be sustained. In that light, plaintiffs-intervenors propose to modify certain aspects of the plaintiffs' and the defendants' plans insofar as they adversely affect these schools.

The Bowditch school, also discussed below, illustrates how the plaintiffs' pairing concept can be maintained with minor modifications so as to assure viable bilingual programs.

The Hernandez School

Plaintiffs' plan recognizes that the Hernandez school plays a vital role in the Boston bilingual education programs. Hernandez was the first bilingual school in Boston and since its inception has served as the source of research and curriculum development producing materials for the other bilingual programs throughout the City. This elementary school presently serves grades K-4: Plaintiffs' proposal would effectively dismantle this important school and use it for the purpose of having a bilingual-bicultural resource center to which students would travel during the day, presumably for a part of the day. Thus, Hispanic students, who would apparently pass through the school, would be subject to multiple busing in a single day.

The State plan does not recommend that Hernandez be one of those schools at which bilingual clusters be placed. Presumably, this is because Hernandez is a small school. Plaintiffs-intervenors recommend that Hernandez continue as a bilingual-bicultural school with a minority-majority ratio of 69%:31%, within the permissable range proposed by the plaintiffs' plan; that the 69% minority component be exclusively composed of Hispanic children in bilingual programs, preferably drawn from Zone 3 where Hernandez is located; and, the 31% majority component should be composed of white students, who will participate in special innovative bilingual-bicultural language programs.

The Fenwick School

An alternative, highly specialized middle school program was first established in 1972 in the Whittier School in Dorchester to provide remedial assistance to Hispanic drop-outs. Additionally, students who had recently arrived from Puerto Rico and other Latin countries whose English was not sufficiently developed, marking them as predictable drop-outs from the regular school program, were enrolled in

this experimental program. The program was moved to the Fenwick School in September, 1974.

The accomplishments of this unique school are widely acknowledged, and the Fenwick School has gained the respect of educators and parents. Through highly individualized instruction, frequent staff meetings to analyze each student's progress, home visits, active parent participation, and supplemental recreational programs, the Fenwick School now provides a low-anxiety, high productivity environment.

There are presently twelve classes at the Fenwick School--10 bilingual educational programs for the Hispanic drop-out, one class for Hispanic children diagnosed as emotionally disturbed, and one for the Hispanic retarded student.

The plaintiffs' plan would eliminate this highly innovative and successful program and convert the Fenwick School into a traditional elementary school. Plaintiffs-intervenors propose that the Fenwick School be retained as a special middle school. To achieve the necessary racial balance within the school, five of the existing bilingual programs for Hispanic drop-outs would be replaced by five regular middle school classes.

The Bowditch School

The December 16th plan proposes the conversion of the Bowditch elementary school, which now contains a viable, on-going bilingual educational program, to an annex to the Jamaica Plain High School. The conversion of the Bowditch School would be temporary since the facility would be used as an annex for only half a year, after which it would be reconverted to an elementary school once again. Plaintiffs-intervenors reject this proposal as ill-conceived and short-sighted, and endorse, with limited reservations, the plaintiffs' plan preserving the Bowditch School as an elementary school.

Under the plaintiffs' plan the Bowditch School (grades 1-4) and the Mendell School (grades 1-4) are paired with the Lyon School (grade 5). A defect of this pairing, however, is that the Lyon School is a single grade school, making a bilingual program of consecutive grades there impossible. Plaintiffs-intervenors propose that there be bilingual educational programs spanning grades 1-5 in both the Bowditch and Mendell Schools. All other students in the three paired schools, other than those in the bilingual educational program, would remain paired pursuant to plaintiffs' plan.

CONCLUSION

Any desegregation plan must consider the rights of plaintiffs-intervenors to effective educational participation.

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February 3, 1975

Respectfully submitted,

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APPENDIX

The vertical columns of the following charts correspond to the specific criticisms (I - VIII) set forth on pp. supra 31-33.

It should be noted that: (1) the number of Hispanic children to be assigned to each school under the Plaintiffs' plan, listed in column (2) labeled "Children" is based on the best available geocoded data. Each figure, in fact, includes "other" minorities (Oriental, American Indian). Thus, the number of Hispanos assigned actually may be less than, but not more than, the number indicated in column (2). There is no data available as to the number of Hispanic children assigned to a school under the Plaintiffs' plan, who are entitled to bilingual education.

Additionally, column (8) indicates the projected percentage of Hispanic children who will not be in bilingual education programs relative to the total capacity of a given school. This projection is based on the assumption that approximately 30% of all Hispanic school children assigned to a given school will not be in bilingual education programs.

ELEMENTARY SCHOOLS

ZONE I SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-- STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(A) CARTER (26	0	18	Yes	No	4-5	Ungrd.	1	4.0% 208
(A) BRADLEY (26)	2	18	Yes	No	1-3	Ungrd.	1	2.0% 338
(B) FANEUIL (17)	2	12	Yes	No	4-5	Ungrd.	0	2.7% 182
(B) C. PERKINS (23)	0	16	Yes	No	1-3	Ungrd.	1	3.2% 182
(C) CHEVERUS (6)	7	4	Yes	No	1-3	Trad.	0	.05% 364
(C) GUILD (16)	1	11	Yes	No	1-3	Trad.	0	1.3% 364
(C) DEARBORN (39)	0	27	Yes	No	4-5	Trad.	1	1.6% 754
(C) O'DONNELL (11)	2	8	Yes	No	1-3	Trad.	0	.96% 312
(C) OTIS (13)	8	9	Yes	No	1-3	Trad.	0	.86% 465
(C) SHERIDAN (29)	0	20	Yes	No	1-3	Trad.	1	3.0% 286
(D) ELIOT (41)	0	29	Yes	No	4-5	Trad.	1	3.0% 312
(D) LINCOLN (206)	3	144	No	Yes	1-3	Trad.	10	9.0% 676
(D) QUINCY (93)	2	65	No	No	4-5	Trad.	4	13.0% 208

ELEMENTARY SCHOOLS

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(E) CHAPMAN (0)	0	0	Yes	No	1-3	Trad.	0	.00% 196
(E) HOWE (7)	3	5	Yes	No	4-5	Trad.	0	.64% 311
(E) P. KENNEDY (2)	3	1.4	Yes	No	1-3	Trad.	0	.16% 364
(F) ADAMS (5)	0	3.5	Yes	No	1-3	Trad.	0	.38% 390
(F) DANTE ALIGHIERI LYMAN (6)	1	4	Yes	No	1-3	Trad.	0	.42% 468
(F) S. BAKER (19)	0	13	Yes	No	4-5	Trad.	0	.13% 441
(G) DILLAWAY (1)	1	.7	Yes	No	1-3	Trad.	0	.11% 260
(G) DUDLEY (19)	0	13	Yes	No	1-3	Trad.	0	2.0% 286
(G) HOLDEN-PRESCOTT (19)	4	12	Yes	No	4-5	Trad.	0	1.1% 598
(H) BACON (10)	0	7	Yes	No	1-3	Trad.	0	1.1% 260
(H) BUNKER HILL (13)	2	9	Yes	No	4-5	Trad.	0	1.4% 286
(I) HALE (7)	0	5	Yes	No	4-5	Trad.	0	.7% 286
(I) KENT (18)	2	12.6	Yes	No	1-3	Trad/OS	0	1.0% 520
(J) MILMORE (17)	3	12	Yes	No	1-5	Trad.	0	2.7% 182

ELEMENTARY SCHOOLS

ZONE II

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(A) ANDREW (26)	1	18	Yes	No	1-3	Trad	1	4.2% 286
(A) DEVER (56)	4	39	Yes	Yes	4-5	Trad.	2	2.3% 728
(A) MOTLEY (35)	0	24.5	Yes	No	1-3	Trad.	1	3.1% 338
(A) PERKINS (46)	0	32	Yes	No	1-3	Trad.	2	3.6% 390
(B) BIGELOW (150)	0	105	No	No	1-3	Ungrd.	7	6.6% 676
(B) HURLEY (93)	1	65	No	Yes	4-5	Ungrd.	4	6.0% 469
(C) FENWICK (64)	0	49	Yes	Yes	1-3	Trad.	3	4.4% 338
(C) HAWTHORNE (74)	0	52	Yes	No	1-3	Trad.	3	10.6% 208
(C) TYNAN (84)	2	59	Yes	No	4-5	Trad.	3	4.8% 520
(D) BURNHAM (33)	3	23	Yes	No	4-5	Trad.	1	4.2% 234
(D) MASON (60.5)	2	42	Yes	No	1-3	Trad.	2	8.2% 286
(E) J. BATES (49)	0	34	Yes	No	4-5	Trad.	2	8.2% 182
(E) HOAR (74)	0	52	Yes	No	1-3	Trad.	3	7.0% 312

ELEMENTARY SCHOOLS

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION=__ STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(F) EMERSON (29.5)	0	21	Yes	No	1-3	Trad.	1	$\frac{2.7\%}{312}$
(F) TUCKERMAN (23)	1	16	Yes	No	4-5	Trad.	1	$\frac{2.7\%}{260}$
(G) PERRY (16)	3	11	Yes	No	4-5	Trad.	0	$\frac{1.4\%}{364}$
(G) WINTHROP (39)	0	27	Yes	No	1-3	Trad.	1	$\frac{7.4\%}{364}$
(H) CLAP (32)	0	22	Yes	No	1-5	Ungrd.	1	$\frac{6.0\%}{364}$
(I) O'REILLY (105)	2	73.5	No	No	1-5	Trad.	4	$\frac{8.7\%}{364}$

ELEMENTARY SCHOOLS

ZONE III SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION=__ STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(A) KENNY (4)	0	3	Yes	No	1-3	Ungrd. & Trad.	0	$\frac{.2\%}{416}$
(A) LEE (38)	2	27	Yes	No	UE	Ungrd.	2.4	$\frac{1.1\%}{1014}$
(A) MURPHY (52)	0	36	Yes	No	PR	Ungrd.	2.4	$\frac{1.8\%}{884}$
(A) RICHARDS (7)	1	5	Yes	No	1-3	Trad.	0	$\frac{.85\%}{234}$
(B) LEEN (15)	0	10.5	Yes	No	1-3	Trad.	0	$\frac{4.3\%}{104}$
(B) STONE (13)	1	9	Yes	No	UE	Ungrd.	0	$\frac{1.3\%}{312}$
(B) TAYLOR (12)	0	8	Yes	No	1-3	Ungrd. or Trad.	0	$\frac{.66\%}{598}$
(C) CUSHING (11.5)	0	8	Yes	No	1-3	Trad.	0	$\frac{1.3\%}{260}$
(C) GIBSON (30)	0	21	Yes	No	4-5	Trad.	1.4	$\frac{1.6\%}{572}$
(C) O'HEARN (10)	0	7	Yes	No	1-3	Trad.	0	$\frac{1.04\%}{286}$
(C) ROCHAMBEAU (30)	0	21	Yes	No	1-3	Trad,	1.4	$\frac{2.5\%}{364}$
(D) BROOKS (15)	2	10.5	Yes	No	1	Trad.	0	$\frac{1.3\%}{338}$
(D) MATHER (69)	1	48	Yes	No	2-5	Trad.	3.2	$\frac{2.6\%}{806}$
(E) DICKERMAN (49)	0	34	Yes	No	1-2	Trad.	2.2	$\frac{4.1\%}{364}$

ELEMENTARY SCHOOLS

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(E) EVERETT (95)	0	66.5	No	Yes	3-5	Trad.	4.4	6.1% 463
(F) HOLLAND (72)	1	50	Yes	No	1-5	OS	3.3	2.35% 936
(G) MARSHALL (59)	0	41	Yes	No	1-5	OS	2.7	1.7% 1066
(H) FIFIELD (36)	1	25	Yes	No	UE PR	Ungrd.	1.6	2.1% 520

ELEMENTARY SCHOOLS

ZONE IV SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(A) BRADFORD (54)	0	38	Yes	No	4-5	Trad.	2	2.05% 760
(A) HEMINGWAY (16)	0	11	Yes	No	1-3	Trad.	0	1.2% 416
(A) F. ROOSEVELT (7)	3	2	Yes	No	1-3	Trad.	0	.30% 338
(A) CHANNING (22)	3	15	Yes	No	1-3	Trad.	1	1.5% 469
(B) GREW (4)	2	3	Yes	No	4,5	Trad.	0	.25% 390
(B) P. A. SHAW (11)	8	8	Yes	No	1-3	Trad.	0	.55% 545
(C) FAIRMONT (10)	3	7	Yes	No	1-3	Trad.	0	.82% 364
(C) WOLCOTT (12)	0	8	Yes	No	4-5	Trad.	0	1.02% 390
(D) (L.MASON) CHITTICK (12)	0	8	Yes	No	PR	Ungrd.	0	.64% 624
(D) TILESTON (7)	0	5	Yes	No	UE	Ungrd.	0	.60% 338
(E) BAKER/LOGUE (5)	0	3.5	Yes	No	UE	Ungrd.	0	.35% 416
(E) E.GREENWOOD (10 5)	0	7	Yes	No	PR	Ungrd.	0	.58% 598
(F) OHRENBERGER*	6		Yes	No	1-5	OS	0	624

(*) unassigned

ELEMENTARY SCHOOLS

ZONE V SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIG-NATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(A) ELLIS (15)	0	10	Yes	No	4-5	Trad.	0	.90% 546
(A) BARRON (9)	0	6	Yes	No	1-3	Trad.	0	1.1% 260
(A) SUMNER (4)	0	2.8	Yes	No	1-3	Trad.	0	.23% 520
(B) PAINE (6)	0	4	Yes	No	1-3	Trad.	0	.42% 468
(B) PHILBRICK (1)	0	1	Yes	No	4-5	Trad.	0	.96% 208
(B) SEAVER (1)	0	.7	Yes	No	4-5	Trad.	0	.09% 312
(C) AUDOBON (5)	0	3	Yes	No	4-5	Trad.	0	.80% 260
(C) CONLEY (8)	0	5	Yes	No	1-3	Trad.	0	.72% 416
(D) ENDICOTT	0	3	Yes	No	4-5	Trad.	0	.64% 312
(D) LONGFELLOW (6)	0	4	Yes	No	1-3	Trad.	0	.33% 596
(E) S. GREENWOOD (7)	0	5	Yes	No	1-3	Trad.	0	.26% 780
(E) MORRIS (6)	0	4	Yes	No	4-5	Trad.	0	.97% 205
(E) MOZART (1)	0	.7	Yes	No	4-5	Trad.	0	.09% 338
(F) CANNON (5)	0	3	Yes	No	1-3	O-S	0	.85% 234
(F) HALEY (7)	0	5	Yes	No	4-5	O-S	0	.64% 312
(F) LYNDON (3)	0	1	Yes	No	1-3	OS/Trad.	0	.60% 338
(G) BEETHOVEN (6)	0	4	Yes	No	1-3	Trad.	0	.48% 416

ELEMENTARY SCHOOLS

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIG-NATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(G) GARRISON (14)	0	10	Yes	No	4-5	Trad.	0	.53% 754
(G) KILMER (6)	0	4	Yes	No	1-3	Trad.	0	.60% 338
(G) RIPLEY (3)	0	1	Yes	No	1-3	Trad.	0	.55% 364
(H) ABRAHAM (17)	0	12	Yes	No	1-5	Trad.	0	2.4% 208
(I) P. BATES (21)	0	15	Yes	No	PR-UE	Ungr.	0	1.9% 364
(J) TROTTER (6)	0	4	Yes	No	1-5	Sub 1-5 Sys.	0	.26% 767

ELEMENTARY SCHOOLS

ZONE VI SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION- STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(A) HIGGINSON (18)	0	13	Yes	No	1-2	Trad.	0	1.5% 338
(A) HAMILTON (30)	5	21	Yes	No	3-5	Trad.	1	2.5% 364
(A) MANNING (9)	0	6	Yes	No	3-5	Trad.	0	1.15% 260
(B) BOWDITCH (73)	1	51	Yes	Yes	1-4	Trad.	3	6.5% 338
(B) LYON (45)	0	31.5	Yes	No	5	Trad.	2	6.5% 208
(B) MENDELL	0	*	Yes	--	1-4	Trad.	*	286
(C) GARDNER/STORROW (83)	7	58	Yes	No	1-3	Trad.	3	3.6% 702
(C) GARFIELD (26)	2	18	Yes	No	1-3	Trad.	1	1.7% 468
(C) TOBIN (117)	0	82	No	Yes	4-5	Trad.	5.5	5.6% 624
(C) WINSHIP (61)	2	43	Yes	No	1-3	Trad.	2.8	4.3% 416
(C) I. ALLEN (*)	6	*	Yes	No	*	Trad.	*	
(D) AGASSIZ (84)	0	59	Yes	No	1-2	OS	3.9	4.2% 596
(D) J. CURLEY (42)	0	29	Yes	No	5	OS	1.9	4.5% 237
(D) HENNIGAN (85)	7	59.5	Yes	Yes	3-4	OS	3.9	3.8% 675

* Figures not available

ELEMENTARY SCHOOLS

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION- STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
(E) JACKSON (40)	10	28	Yes	No	1-5	OS	1.8	3.8% 319
(F) BALDWIN (95)	0	66.5	No	No	PR-UE	Ingrd.	4.4	9.1% 312
(G) FULLER (73)	0	51	Yes	No	1-5	Trad.	3.4	7.0% 312
(H) FARRAGUT (30)	3.5	21	Yes	Yes	1-5	Trad.	1.4	3.14% 286
(I) BARRET (36)	1	25	Yes	No	1-5	Trad.	1.6	6.0% 182
(J) J.F.KENNEDY (158)	0	111	No	Yes	PR-UE	Ungrd.	7.4	18.6% 598

MIDDLE SCHOOLS

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
ZONE I								
EDWARDS (73)	0	51	Yes	No	6-8	Middle	3	2.75% 800
TIMILTY-LEWIS (3	0	27	Yes	No	6-8	Middle	1	.89% 1230
MICHELANGELO (11	0	81	No	No	6-8	Middle	5	7.4% 475
BARNES-McKAY (77	0	54	Yes	No	6-8	Middle	3	1.6% 1451
ZONE II								
MACKEY (235)	0	164.5	No	Yes	6-8	Middle	11	8.9% 790
GAVIN (147)	0	103	No	No	6-8	Middle	7	3.9% 1120
McCORMACK (55)	0	38.5	Yes	No	6-8	Middle	2	1.8% 925
ZONE III								
KING (80)	0	56	Yes	No	6-8	Middle	3	2.4% 1010
CLEVLAND (71)	0	50	Yes	Yes	6-8	Middle	3	2.6% 810
HOLMES (33)	0	23	Yes	No	6-8	Middle	1	1.7% 588
WILSON (53)	0	37	Yes	No	6-8	Middle	2	1.5% 1068

MIDDLE SCHOOLS

SCHOOL	CLASS SPACE AVAILABLE	CHILDREN	INSUFFICIENT CLUSTERING (60 OR LESS)	PROGRAM ELIMINATION-STUDENT DISPERSAL	LIMITED GRADE SPAN	SCHOOL DESIGNATION	NUMBER CLASSRMS. NEEDED	ISOLATION OF NON-BILINGUAL
ZONE IV								
LEWENBERG (10)	0	7	Yes	No	6-8	Middle	0	.33% 901
ROGERS (30)	0	21	Yes	No	6-8	Middle	1	.80% 1128
THOMPSON (28)	0	20	Yes	No	6-8	Middle	1	1.03% 774
ZONE V								
IRVING (42)	0	29	Yes	No	6-8	Middle	1	1.05% 1230
PARKMAN (10)	0	7	Yes	No	6-8	Middle	0	.55% 540
SHAW (21)	0	15	Yes	No	6-8	Middle	1	.70% 850
ZONE VI								
MARY CURLEY (182)	0	127	No	No	6-8	Middle	8.46	5.08% 1062
EDISON (162)	0	113	No	No	6-8	Middle	7.53	6.2% 786
TAFT (145)	0	101.5	No	No	6-8	Middle	6.8	8.0% 540
T. ROOSEVELT (111)	0	78	No	No	6-8	Middle	5.2	17.0% 194

B. Jose A. Cardenas, "Bilingual Education, Segregation, and A Third Alternative," reprinted from 19 *Inequality in Education* 19 (February, 1975)

Bilingual Education, Segregation, and A Third Alternative

by Jose A. Cárdenas

The Spanish-speaking population in the United States continues to be educationally shortchanged as a result of school districts' widespread failure to institute adequate bilingual instruction programs. This failure is most often attributed to organizational obstacles. Educators caught in equality of educational opportunity litigation commonly complain of difficulties in offering bilingual education within heterogeneous groupings of children having varying language dominance characteristics.

Faced with the demand for implementation of bilingual programs, school districts in many areas have tended to project such programs solely for homogeneous groups of monolingual, Spanish-speaking children. Yet they generally have neglected to accept, project or implement bilingual education programs for small numbers of Spanish-speaking children, or for any number when found in heterogeneous settings.

The organizational difficulties that many school districts cite are, of course, very real. However, methodologies to resolve them do exist. Unfortunately, it is suspected that some recalcitrant school systems might be using their organizational problems to mask an unwillingness to provide for the educational needs of non-English-speaking children.

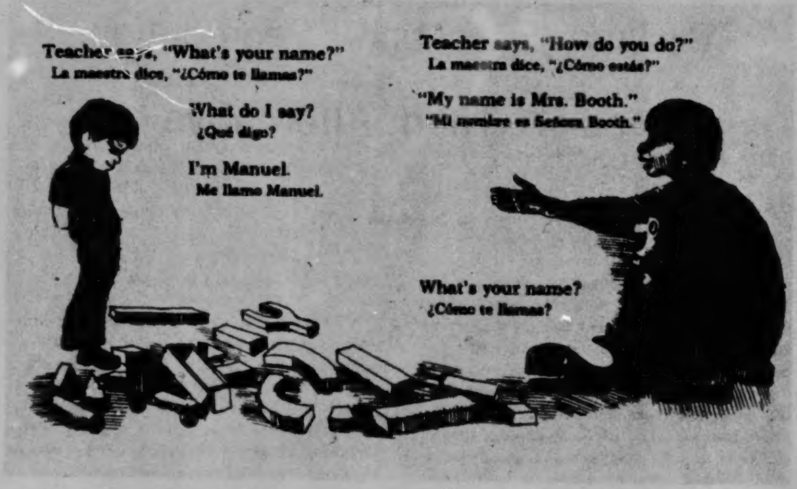
Jose A. Cárdenas is noted for his contributions to improving the education of Spanish-speaking students in the Southwest, through his extensive involvement in teaching, publishing, consulting, administrative and legislative work. He is currently the Executive Director of the Intercultural Development Research Association in San Antonio, Texas.

Is There a Paradox?

Whatever the underlying reason, one thing is clear: school districts are failing to deliver adequate bilingual instruction for all but a handful of the non-English-speaking school population. Instead, they have proffered two equally dysfunctional alternatives. Spanish-speaking children are either asked to forego the benefits of bilingual instruction or allow themselves to be segregated in order to participate in a bilingual program.

The school districts' argument relative to bilingual instruction in a heterogeneous setting is commonly stated as follows: "How can a school system operate a classroom in which a portion of the children speak no English and must be taught in Spanish and a portion of the children speak no Spanish and must be taught in English?" Teaching all children in English denies the non-English-speaker equality of educational opportunity, but reversing the common methodology and teaching all children in Spanish creates a handicap for the non-Spanish-speakers and denies them equality of educational opportunity.

On its face, this paradox seems to present an insuperable problem. It was raised in the Del Rio intervention in *U.S.* v *Texas*[1] when the Federal Court for the Eastern District of Texas ordered a bilingual education program implemented in the San Felipe Del Rio School District. The same argument was made in *Keyes* v *School District No. 1, Denver*[2] during recent remedy hearings. With the advent of *Lau* v *Nichols*[3] and *Serna* v *Portales*[4], holding Title VI of the 1964 Civil Rights Act violated by school systems' treatment of non-English-speakers, it can be anticipated that the problem will be a primary consideration in the development of education plans in response to these and related court orders.


Teacher says, "What's your name?"
La maestra dice, "¿Cómo te llamas?"
What do I say?
¿Qué digo?
I'm Manuel.
Me llamo Manuel.
Teacher says, "How do you do?"
La maestra dice, "¿Cómo estás?"
"My name is Mrs. Booth."
"Mi nombre es Señora Booth."
What's your name?
¿Cómo te llamas?

Drawing by Joe Lasker from *What Do I Say?* (English/Spanish Edition) by Norma Simon, Chicago: Albert Whitman & Company (© 1967).

Similarly, the new legislative trend making bilingual education mandatory in an increasing number of states will, in all probability, lead to many school districts continuing to cite this paradoxical situation as a rationalization for their failure to implement bilingual programs. Or, districts might apply the equally repugnant alternative, the continued segregation of minority children in the name of bilingual education.

Clearly, many school districts' current practices of offering Spanish-speaking students either segregated bilingual education or integration without bilingual education are counterproductive to a healthy learning climate. Just as clearly, a third option to these practices must be developed as quickly as possible, lest litigation and legislation be unfairly influenced by the paradox we have described.

Before outlining some specific methodologies for teaching Spanish-speaking children in a heterogeneous setting, let us examine the prevailing educational dogma that has led to the often cited bilingual education paradox.

This dogma projects a classroom situation in which thirty children are marched in lockstep through identical instructional activities. Obviously, all children, regardless of ethnicity or language, have different learning abilities ranging perhaps from retarded to genius, varying past achievement rates ranging from retained-in-grade to child prodigy, differing interests, aspirations, motivations, pressures, and learning styles. Yet, in spite of their differences, children are subjected to common instructional activities directed at the mythical average or typical child. It is this methodology, based on an outmoded dogma, that cannot fail to produce the mediocrity for which our schools are becoming famous.

Individualizing Instruction

Coping with varying types and degrees of language dominance is no different than coping with other varying characteristics of children. But in order to do so it is necessary that learning activities be differentiated in keeping with children's varying characteristics. The ultimate goal is an individualized instructional program in which each activity is compatible with each individual child's characteristics, not only as they pertain to economic status, culture and language, but also to include learning ability, achievement level, motivation, interests, etc.

In order to accomplish this humanizing or individualization of instruction it is necessary to change our perceptions of the classroom teacher. The teacher should no longer be perceived in a "little red schoolhouse" role, interacting with thirty children as they recite their lessons, but rather as a director of learning activities, utilizing diagnostic, prescriptive, and instructional resources in carrying out learning activities for individual, small groups, and large groups of children.

School systems must develop the technical and organizational capability for the implementation of such instructional programs. Clinging to outmoded educational dogma is not only fruitless but dangerous, since it is impossible to adequately train children for living in the twentieth century with eighteenth century methodologies. Neither the Spanish-speaking nor the English-speaking will survive.

Fortunately, the state of the art is such that methodologies are available to deal with the complexities of modern instructional problems. The following methodologies have been successfully applied as responses to the need for providing unique learning situations in keeping with the varying characteristics of children.

Groups: Progressive teachers have learned to utilize the technique of forming flexible and interchangeable groups for implementing some instructional activities. Reading instruction is often presented in small intra-classroom groups. Small groups of children reading at similar levels interact with the teacher while the rest of the class performs other work and play activities. Skilled teachers have no problem in training children to conduct self-directed activities which are neither wasteful nor disruptive as the teacher works with a part of the class. Other areas of the curriculum can be and are being taught in this manner. There is no reason why similar intra-classroom groups cannot be formed for bilingual instruction on the basis of language dominance.

Exchange: Another response to the varying characteristics of children and teachers is to regroup among different classrooms in the same school for varying periods of time during the day. Thus non-English-speaking children can be regrouped for bilingual instruction during the school day and regrouped heterogeneously for activities in which language dominance is not a critical problem. This practice has been observed in the early elementary grades in certain progressive school districts for many years. In a more sophisticated and institutionalized form it is the basis for most secondary school organizational patterns, though such strict departmentalization is not being recommended here.

Staff differentiation: This favored response to the problem of heterogeneous grouping was found very effective in the Edgewood school district in meeting the unique needs of children. (The Edgewood Independent School District, the poorest of 1149 school districts in Texas and of *Rodriguez* fame,[5] pioneered in the development of successful instructional programs for economically disadvantaged and minority children in San Antonio, Texas.) The response consisted of providing staff resources for teachers in order to give each child a highly individualized instructional program. Among personnel utilized for individual and small group instruction were assistant teachers, aides, student teachers, interns, practicum college students, volunteer parents, and other school children.

The teacher was given sufficient time to devote to training and planning activities, and most of the actual interaction with children was carried out by trained paraprofessional personnel as described above.

Assistant teachers and teacher aides were paid paraprofessionals employed with funds made available by the state foundation program, Title VII, Title I, Model Cities, Career Opportunities Program (COP), employment and training programs, veterans' programs, Teacher Corps, and a variety of other sources. Since district policy demanded that paraprofessional personnel be recruited from the immediate school community, they invariably reflected the child's economic, cultural, and language characteristics. Though it took several years to recruit an adequate supply of bilingual teachers, each child in the school had immediate and ready access to paraprofessional personnel who could converse in the child's preferred language mode.

Colleges placed a large number of bilingual interns, student teachers, and practicum students. Many of the college students came to San Antonio for this purpose from other cities and from as far away as Michigan and Oregon. This type of staff resource was acquired at no cost to the school district.

High school students in psychology, child care, and homemaking classes participated in Youth-Tutoring-Youth (YTY) programs in the district. Junior high school students were also utilized. The benefits derived by the children being taught were exceeded only by the benefits derived by the secondary school students participating in the program. The Youth Tutors made substantial gains in the subject matter areas in which they taught. Truancy and disciplinary problems among the secondary students before participation disappeared as they found respect and self-fulfillment in helping other children.

The most unexpected payoff in utilizing differentiated staffing was from parents who participated as teaching volunteers. "A parent a day will keep the doctor away" was commonly heard as teachers attempted to meet a goal of at least one parent a day in each classroom. Either the skills needed for conducting simple and routine instructional activities (in English or Spanish) have been grossly overrated, or skills possessed by laymen have been grossly underrated, since the parents experienced success in working with the children. Their success grew as they continued to develop skills under the close supervision of the teachers. Parents who had never had much to do with the school proved that they did care for their children when the relationship with the school became positive, successful, and rewarding.

This elaborate account of successful experiences in implementing staff differentiation patterns is presented in order to demonstrate that such staffing is practical and that the facilitating of a bilingual program need not be constrained by a lack of local wealth or the absence of certified bilingual staff. Many other school systems have experienced similar success in the development and implementation of differentiated staffing.

Resource materials: Individualization of instruction can be achieved by the utilization of a wealth of instructional media which is readily available. Motion pictures, television, slides, and filmstrips can be utilized individually or in small groups. Individual or group language laboratories provide for a variety of instructional activities. Programmed instruction and self-pacing materials can also be utilized, as well as an endless variety of books, games, workbooks and other materials.

SUMMARY

It has been shown that the enrollment of small numbers of non-English-speaking children, time-space constraints, or the lack of a large certified bilingual staff need not be obstacles to providing quality instruction for all children in a bilingual education program.

The self-described helplessness of some school districts in coping with heterogeneous language groupings of children is more of an admission of general educational inadequacies than a problem of bilingual education, though a relationship has been observed between the conservative provincialism of racist school systems and the conservative provincialism of their instructional programs.

With minimal effort and a minimum of cost school districts can offer a third option to the two dysfunctional alternatives, segregation with bilingual education or integration without, which perpetuate the denial of educational opportunities to non-English-speaking children.

FOOTNOTES

[1] *United States v. Texas*, 342 F. Supp. 24 (E. D. Tex. 1971), affirmed 447 F. 2d. 441 (5th Cir. 1971), 466 F. 2d. 518 (5th Cir. 1972).

[2] *Keyes v. School District No. 1*, 380 F. Supp. 673 (D. Colo. 1974).

[3] *Lau v. Nichols*, 414 U.S. 563 (1974).

[4] *Serna v. Portales Municipal Schools*, 351 F. Supp. 1279 (D.N.M., 1972).

[5] In *San Antonio Independent School District v. Rodriguez* the United States Supreme Court rejected a claim that the Texas school financing scheme was inconsistent with federal constitutional provisions. 93 S. Ct. 1278 (1973).

VI. The Applicable Federal Law

This section includes the text of or citations to pertinent provisions of federal law. These materials are

- the text of pertinent portions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, 2000d-1; implementing regulations 45 C.F.R. Part 80.3; HEW's interpretative memorandum of May 25, 1970; regarding these provisions, see *Lau* v. *Nichols*, 414 U.S. 563 (1974), reprinted at p. 19, *supra*; a further memorandum of HEW on the programs necessary to comply with Title VI, Summer, 1975;

- excerpts from the Equal Educational Opportunity Act of 1974, 20 U.S.C. 1703, 1706, 1708-10; regarding Section 1703(f), see *Morales* v. *Shannon*, 516 F.2d 411, 415 (C.A. 5, 1975), reprinted at p. 49, *supra*;

- the Bilingual Education Act of 1974, 20 U.S.C. 880b *et seq.*;

- an excerpt from *American Education*, DHEW, Office of Education, July, 1974, titled "DHEW Expenditures on Bilingual Education" (information for fiscal year 1973);

- a list of citations to federal statutes (and their implementing regulations) under which there is at least some funding for bilingual education; and

- an article by a legal service attorney who worked successfully with client groups in seeking federal funding for bilingual education.

As has been noted above (see Introduction, page 2), the Summer, 1975 HEW memorandum on compliance with Title VI standards may have a significant impact.

SUBCHAPTER V.—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Pub.L. 88-352, Title VI, § 601, July 2, 1964, 78 Stat. 252.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2355.

* * *

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Pub.L. 88-352, Title VI, § 602, July 2, 1964, 78 Stat. 252.

Historical Note

Equal Opportunity in Federal Employment. Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex.Ord.No.11246, Sept. 24, 1965, 30 F.R. 12319 and Ex.Ord.No.11478, Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2355.

B. Regulations, Title VI of the Civil Rights Act of 1964, 45 C.F.R. Part 80.1-80.3(a)(b)

PART 80—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
80.1 Purpose.
80.2 Application of this part.
80.3 Discrimination prohibited.
80.4 Assurances required.
80.5 Illustrative applications.
80.6 Compliance information.
80.7 Conduct of investigations.
80.8 Procedure for effecting compliance.
80.9 Hearings.
80.10 Decisions and notices.
80.11 Judicial review.
80.12 Effect on other regulations; forms and instructions.
80.13 Definitions.

APPENDIX A: Programs to which this Part applies.

AUTHORITY: The provisions of this Part 80 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1, unless otherwise noted.

SOURCE: The provisions of this Part 80 appear at 29 F.R. 16298, Dec. 4, 1964; 29 F.R. 16988, Dec. 11, 1964; 30 F.R. 35, Jan. 5, 1965, unless otherwise noted.

§ 80.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health, Education, and Welfare.

§ 80.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 80.3. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(Sec. 604, 78 Stat. 253; 42 U.S.C. 2000d-3) [29 F.R. 16298, Dec. 4, 1964, as amended at 32 F.R. 14556, Oct. 19, 1967]

§ 80.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

C. Interpretative Memorandum of HEW, May 25, 1970

ATTACHMENT 3

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

May 25, 1970

MEMORANDUM

TO : School Districts With More Than Five Percent National Origin-Minority Group Children

FROM : J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT : Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

D. HEW Memorandum on "Evaluation of Voluntary Compliance Plans Designed to Eliminate Educational Practices Which Deny Non-English Language Dominant Students Equal Educational Opportunity," Summer, 1975

E. MAZZONE 9/1

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

AUG 11 1975

DEPARTMENT OF EDUCATION
RECEIVED
AUG 1 1975
TRANSITIONAL BILINGUAL EDUCATION

DEPARTMENT OF EDUCATION
RECEIVED
AUG 14 1975
TRANSITIONAL BILINGUAL EDUCATION

MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS

FROM: Commissioner of Education, U. S. Office of Education

FROM: Acting Director, Office for Civil Rights

SUBJECT: Evaluation of Voluntary Compliance Plans Designed to Eliminate Educational Practices Which Deny Non-English Language Dominant Students Equal Educational Opportunity

In furtherance of regulations issued by this Department pu[illegible] Title VI of the Civil Rights Act of 1964, this Department, on May 25, 1970, issued a policy statement (subsequently published at 35 Federal Register 11595) stating in part that "Where inability to speak and understand the English language excludes national-origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to the students." (Attachment A).

On January 21, 1974 the United States Supreme Court in Lau v. Nichols (414 U.S. 563) expressly upheld the Department regulations (as interpreted by this policy statement) prohibiting educational practices by which "students who do not understand English are effectively foreclosed from any meaningful education." (Attachment B).

Earlier this year, our offices sent letters to several State Education Agencies requesting the assistance of these agencies in the conduct of compliance reviews of specific school districts within those states. State Education Agencies were specifically requested to assist the Department in the dissemination and evaluation of compliance reports.

In order to facilitate efforts by both State Education Agencies and this Office to secure voluntary compliance with current Title VI requirements in this regard, this Office designated a Task Force to develop an outline of those educational approaches which would constitute appropriate "affirmative steps" to be taken by a non-complying school district "to open its instructional program" to students foreclosed currently from effective participation therein. That outline has been developed and is formally called, "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful under Lau v. Nichols." (Attachment C).

This document separately discusses the types of educational approaches appropriate for elementary and secondary students and identifies approaches which are specifically geared to the differing language backgrounds and masteries of students.

School districts found to be in non-compliance with the aforementioned provisions of Title VI will be required to develop specific voluntary compliance plans to eliminate discriminatory educational practices (including the effects of past practices). Voluntary compliance plans which set forth educational strategies consistent with the approaches outlined in this document and which contain the other elements specified therein, will be accepted by this Office. School districts submitting voluntary compliance plans to this Office which are not consistent with the outlined approaches or with other required plan elements must demonstrate affirmatively, at the time of submission, that such plans, at a minimum, will be equally effective in ensuring equal educational opportunity.

In order to provide technical assistance to those school districts that wish to develop such voluntary compliance plans, the Office of Education has set up General Assistance Centers (Type B) commonly referred to as "Lau Centers." School districts wishing to obtain technical assistance to develop such plans should be advised to contact the Lau General Assistance Center which serves their geographical area (Attachment D).

If you have any questions concerning any of the matters discussed in this memorandum, please do not hesitate to contact your Regional Office for Civil Rights for further information.

Thank you for your continuing cooperation in this important area of mutual concern.

T. H. Bell
Commissioner of Education
U. S. Office of Education

Martin Gerry
Martin H. Gerry
Acting Director
Office for Civil Rights

Attachments

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OFFICE FOR CIVIL RIGHTS

TASK FORCE FINDINGS SPECIFYING REMEDIES AVAILABLE FOR ELIMINATING PAST EDUCATIONAL PRACTICES RULED UNLAWFUL UNDER LAU v. NICHOLS

SUMMER 1975

TABLE OF CONTENTS

I. Identification of Student's Primary or Home Language . 1
II. Diagnostic/Prescriptive Approach 4
III. Educational Program Selection 6
IV. Required and Elective Courses 13
V. Teacher Requirements 15
VI. Racial/Ethnic Isolation and/or Identifiability of Schools and Classes 18
VII. Notification to Parents of Students Whose Primary or Home Language is Other Than English 19
VIII. Evaluation 20
IX. Definition of Terms 21

The immediate implementation of the requirements listed within does not apply to those school districts which have had a substantial number of recent school-age Indo-Chinese immigrants whose primary or home language is other than English in the 1975-76 school year.

I. Identification of Student's Primary or Home Language.

The first step to be included in a plan submitted by a district found to be in noncompliance with Title VI under Lau is the method by which the district will identify the student's primary or home language. A student's primary or home language, for the purpose of this report, is other than English if it meets at least one of the following descriptions:

A. The student's first acquired language is other than English.

B. The language most often spoken by the student is other than English.

C. The language most often spoken in the student's home is other than English, regardless of the language spoken by the student.

These assessments (A-C, above) must be made by persons who can speak and understand the necessary language(s). Then the district must assess the degree of linguistic function or ability of the student(s) so as to place the student(s) in one of the following categories by language.

A. Monolingual speaker of the language other than English (speaks the language other than English exclusively).

B. Predominantly speaks the language other than English (speaks mostly the language other than English, but speaks some English).

C. Bilingual (speaks both the language other than English and English with equal ease).

D. Predominantly speaks English (speaks mostly English, but some of the language other than English).

E. Monolingual speaker of English (speaks English exclusively).

In the event that the student is multilingual (is functional in more than two languages in addition to English), such assessment must be made in all the necessary languages.

In order to make the aforementioned assessments the district must, at a minimum, determine the language most often spoken in the student's home, regardless of the language spoken by the student, the language most often spoken by the student in the home and the language spoken by the student in the social setting (by observation).

These assessments must be made by persons who can speak and understand the necessary language(s). An example of the latter would be to determine by observation, the language used by the student to communicate with peers between classes or in informal situations. These assessments must cross-validate one another (Example: student speaks Spanish at home and Spanish with classmates at lunch). Observers must estimate the frequency of use of each language spoken by the student in these situations.

In the event that the language determinations conflict (Example: student speaks Spanish at home, but English with classmates at lunch), an additional method must be employed by the district to make such a determination (for example the district may wish to employ a test of language dominance as a third criterion). In other words, two of the three criteria will cross-validate or the majority of criteria will cross-validate (Yield the same language).

Due to staff limitations and priorities, we will require a plan under Lau during this initial stage of investigation when the district has 20 or more students of the same language group identified as having a primary or home language other then English. However, a district does have an obligation to serve any student whose primary or home language is other than English.

II. Diagnostic/Prescriptive Approach

The second part of a plan must describe the diagnostic/prescriptive measures to be used to identify the nature and extent of each student's educational needs and then prescribe an educational program utilizing the most effective teaching style to satisfy the diagnosed educational needs. The determination of which teaching style(s) are to be used will be based on a careful review of both the cognitive and affective domains and should include an assessment of the responsiveness of students to different types of cognitive learning styles and incentive motivational styles -- e.g., competitive v. cooperative learning patterns. The diagnostic measures must include diagnoses of problems related to areas or subjects required of other students in the school program and prescriptive measures must serve to bring the linguistically/culturally different student(s) to the educational performance level that is expected by the Local Education Agency (LEA) and State of nonminority students. A program designed for students of limited English-speaking ability must not be operated in a manner so as to solely satisfy a set of objectives divorced or isolated from those educational objectives established for students in the regular school program.

III. Educational Program Selection

In the third step the district must implement the appropriate type(s) of educational program(s) listed in this Section (III, 1-5), dependent upon the degree of linguistic proficiency of the students in question. If none seem applicable check with your Lau coordinator for further action.

1. In the case of the monolingual speaker of the language other than English (speaks the language other than English exclusively).

   A. At the Elementary and Intermediate Levels:

   Any one or combination of the following programs is acceptable.

   1. Transitional Bilingual Education Program (TBE)
   2. Bilingual/Bicultural Program.
   3. Multilingual/Multicultural Program (see definitions, page 21).

   In the case of a TBE, the district must provide predictive data which show that such student(s) are ready to make the transition into English and will succeed educationally in content areas and in the educational program(s) in which he/she is to be placed. This is necessary so the district will not prematurely place the linguistically/culturally different student who is not ready to participate effectively in an English language curriculum in the regular school program (conducted exclusively in English).

Because an ESL program does not consider the affective nor cognitive development of students in this category and time and maturation variables are different here than for students at the secondary level, an ESL program is not appropriate.

B. At the Secondary Level:

Option 1 - Such students may receive instruction in subject matter (example: math, science) in the native language(s) and receive English-as-a-Second Language (ESL) as a class component (see definitions, page 21).

Option 2 - Such students may receive required and elective subject matter (examples: math, science, industrial arts) in the native language(s) and

bridge into English while combining English with the native language as appropriate (learning English as a first language, in a natural setting)

Option 3 - Such students may receive ESL or High Intensive Language Training (HILT) (see definition, page 21) in English until they are fully functional in English (can operate equally successfully in school in English) then bridge into the school program for all other students.

A district may wish to utilize a TBE Bilingual Bicultural or Multilingual/Multicultural program in lieu of the three options presented in this section (III.1.B.) This is permissible. However, if the necessary prerequisite skills in the native language(s) have not been taught to these students, some form of compensatory education in the native language must be provided.

In any case, students in this category (III.1.B.) must receive such instruction in a manner that is expeditiously carried out so that the student in question will be able to participate to the greatest extent possible in the regular school program as soon as possible. At no time can a program be selected in this category (III.1.B.) to place the students in situations where the method of instruction will result in a substantial delay in providing these students with the necessary English language skills needed by or required of other students at the time of graduation.

NOTE: You will generally find that students in this category are recent immigrants.

2. In the case of the predominate speaker of the language other than English (speaks mostly the language other than English, but speaks some English):

   A. At the Elementary Level:

   Any one or combination of the following programs is acceptable.

1. TBE
2. Bilingual/Bicultural Program
3. Multilingual/Multicultural Program

In the case of a TBE, the district must provide predictive data which show that such student(s) are ready to make the transition into English and will educationally succeed in content areas and the educational program in which he/she is to be placed.

Since an ESL program does not consider the affective nor cognitive development of the students in this category and the time and maturation variables are different here than for students at the secondary level, an ESL program is not appropriate.

B. At the Intermediate and High School Levels:

The district must provide data relative to the student's academic achievement and identify those students who have been in the school system for less than a year. If the student(s) who have been in the school system for less than a year are achieving at grade level or better, the district is not required to provide additional educational programs. If, however, the students who have been in the school system for a year or more are underachieving (not achieving at grade level), (see definitions, page 21) the district must submit a plan to remedy the situation. This may include smaller class size, enrichment materials, etc. In either this case or the case of students who are underachieving and have been in the school system for less than a year, the remedy must include any one or combination of the following 1) an ESL 2) a TBE, 3) a Bilingual/Bicultural Program 4) a Multilingual/Multicultural Program. But such students may not be placed in situations where all instruction is conducted in the native language as may be prescribed for the monolingual

speaker of a language other than English, if the necessary prerequisite skills in the native language have not been taught. In this case some form of compensatory education in the native language must be provided.

NOTE: You will generally find that students in this category are not recent immigrants.

3. In the case of the bilingual speaker (speaks both the language other than English and English with equal ease) the district must provide data relative to the student(s) academic achievement.

In this case the treatment is the same at the elementary, intermediate and secondary levels and differs only in terms of underachievers and those students achieving at grade level or better.

A. For the students in this category who are underachieving, treatment corresponds to the regular program requirements for all racially/ethnically identifiable classes or tracks composed of students who are underachieving, regardless of their language background.

B. For the students in this category who are achieving at grade level or better, the district is not required to provide additional educational programs.

4. In the case of the predominant speaker of English (speaks mostly English, but some of a language other than English) treatment for these students is the same as III, 3 above.

5. In the case of the monolingual speaker of English (speaks English exclusively) treat the same as III, 3 above.

NOTE: ESL is a necessary component of all the aforementioned programs. However, an ESL program may not be sufficient as the only program operated by a district to respond to the educational needs of all the types of students described in this document.

IV. Required and Elective Courses

In the fourth step of such plan the district must show that the required and elective courses are not designed to have a discriminatory effect

A. Required courses. Required courses (example: American History) must not be designed to exclude pertinent minority developments which have contributed to or influenced such subjects.

B. Elective Courses and Co-curricular Activities. Where a district has been found out of compliance and operates racially/ethnically identifiable elective courses or co-curricular activities, the plan must address this area by either educationally justifying the racial/ethnic identifiability of these courses or activities, eliminating them, or guaranteeing that these courses or co-curricular activities will not remain racially/ethnically identifiable.

There is a prima facie case of discrimination if courses are racially/ethnically identifiable.

Schools must develop strong incentives and encouragement for minority students to enroll in electives where minorities have not traditionally enrolled. In this regard, counselors, principals and teachers have a most important role. Title VI compliance questions are raised by any analysis of counseling practices which indicates that minorities are being advised in a manner which results in their being disproportionately channeled into certain subject areas or courses. The school district must see that all of its students are encouraged to fully participate and take advantage of all educational benefits.

Close monitoring is necessary to evaluate to what degree minorities are in essence being discouraged from taking certain electives and encouraged to take other elective courses and insist that to eliminate discrimination and to provide equal educational opportunities, districts must take affirmative duties to see that minority students are not excluded from any elective courses and over included in others.

All newly established elective courses cannot be designed to have a discriminatory effect. This means that a district cannot, For example, initiate a course in Spanish literature designed exclusively for Spanish-speaking students so that enrollment in that subject is designed to result in the exclusion of students whose native language is English but who could equally benefit from such a course and/or be designed to result in the removal of the minority students in question from a general literature course which should be designed to be relevant for all the students served by the district.

V. Instructional Personnel Requirements (see definitions, page 2

Instructional personnel teaching the students in question mus be linguistically/culturally familiar with the background of the students to be affected.

The student/teacher ratio for such programs should equal or be less than (fewer students per teacher) the student/teacher ratio for the district. However, we will not requir corrective action by the district if the number of students in such programs are no more than five greater per teacher than the student/teacher ratio for the district.

If instructional staffing is inadequate to implement progra requirements, in-service training, directly related to improving student performance is acceptable as an immediate and temporary response. Plans for providing this training must include at least the following:

1. Objectives of training (must be directly related to ultimately improving student performance)
2. Methods by which the objective(s) will be achieved
3. Method for selection of teachers to receive training
4. Names of personnel doing the training and location of training
5. Content of training

6. Evaluation design of training and performance criteria for individuals receiving the training

7. Proposed timetables

This temporary in-service training must continue until staff performance criteria has been met.

Another temporary alternative is utilizing para professional persons with the necessary language(s) and cultural background(s). Specific instructional roles of such personnel must be included in the plan. Such plan must show that this personnelwill aid in teaching and not be restricted to those areas unrelated to the teaching process (checking roll, issuing tardy cards, etc.)

In addition, the district must include a plan for securing the number of qualified teachers necessary to fully implement the instructional program. Development and training of para professionals may be an important source for the development of bilingual/bicultural teachers.

VI. Racial/Ethnic Isolation and/or Identifiability of Schools and Classes

A. Racially/Ethnically Isolated and/or Identifiable Schools - It is not educationally necessary nor legally permissable to create racially/ethnically identifiable schools in order to respond to student language characteristics as specified in the programs described herein.

B. Racially/Ethnically Isolated and/or Identifiable Classes - The implementation of the aforementioned educational models do not justify the existence of racially/ethnically isolated or identifiable classes, per se. Since there is no conflict in this area as related to the application of the Emergency School Aid Act (ESAA) and existing Title VI regulations, standard application of those regulations is effective.

VII. Notification to Parents of Students Whose Primary or Home Language is Other Than English

A. School districts have the responsibility to effectiv notify the parents of the students identified as hav a primary or home language other than English of all school activities or notices which are called to the attention of other parents. Such notice, in order to adequate, must be provided in English and in the necessary language(s) comprehensively paralleling the exact content in English. Be aware that a literal translation may not be sufficient.

B. The district must inform all minority and nonminority parents of all aspects of the programs designed for students of limited English-speaking ability and that these programs constitute an integral part of the total school program.

VIII. Evaluation

A "Product and Process" evaluation is to be submitted in the plan. This type of evaluation, in addition to stating the "product" (end result), must include "process evaluation" (periodic evaluation throughout the implementation stage). A description of the evaluation design is required. Time-lines (target for completion of steps) is an essential component.

For the first three years, following the implementation of a plan, the district must submit to the OCR Regional Office at the close of sixty days after school starts, a "progress report" which will show the steps which have been completed. For those steps which have not been completed, a narrative from the district is necessary to explain why the targeted completion dates were not met. Another "progress report" is also due at the close of 30 days after the last day of the school year in question.

IX. Definition of Terms:

1. Bilingual/Bicultural Program

A program which utilizes the student's native language (example: Navajo) and cultural factors in instruct maintaining and further developing all the necessary skills in the student's native language and culture while introducing, maintaining and developing all the necessary skills in the second language and culture (example: English). The end result is a student who can function, totally, in both languages and cultures.

2. English-as-a-Second Language (ESL)

A structured language acquisition program designed to teach English to students whose native language is not English.

3. High Intensive Language Training (HILT)

A total immersion program designed to teach students a new language.

4. Multilingual/Multicultural Program

A program operated under the same principals as a Bilingual/Bicultural Program (X,1) **except** that more than one language and culture, in addition to English language and culture is treated. The end result is a student who can function, totally, in more than two languages and cultures.

5. Transitional Bilingual Education Program (TBE)

A program operated in the same manner as a Bilingual/Bicultural Program, except that once the student is fully functional in the second language (English), further instruction in the native language is no longer required.

6. Underachievement

Underachievement is defined as performance in each subject area (e.g. reading, problem solving) at one or more standard deviations below district norms as determined by some objective measures for non-ethnic/racial minority students. Mental ability scores cannot be utilized for determining grade expectancy.

7. **Instructional Personnel**

Persons involved in teaching activities. Such personnel includes, but is not limited to, certified, credentialized teachers, paraprofessionals, teacher aides, parents, community volunteers, youth tutors, etc.

GENERAL ASSISTANCE CENTER - TYPE B (LAU)

AREA A: ME., NH., VT., MA.,
RI., CT., NY., NJ., PR., VI.

Dr. William G. Milan
Bilingual GAC (Box 11)
Teachers College
Columbia University
New York, N.Y. 10027
(212) 678 3155 (Aug. 1)

AREA C: OH., IN., IL., MI.,
MN., WI., MO., KS., IA., NE.

Dr. Josue M. Gonzalez
Chicago State University
95th St. At King Drive
Chicago, Illinois 60628
(312) 995-2363

AREA E: MT., ND., SD., WY.,
CO., UT., OK.

Mr. Abe Plummer, Actg. Dir.
Coalition of Indian Controlled
School Bds. - Colorado Assn. of
Bilingual-Bicultural Education
Mr. Dale Vigil, Rep.
(303)573-9016

AREA G: That part of Ca. south
of the northern boundaries of
San Luis Obispo, Kern and San
Bernardino Counties.

Dr. M. Reyes Mazon
Institute for Cultural Pluralism
San Diego State University
5402 College Avenue
San Diego, Ca. 92182
(714) 286-5193

AREA B: PA., DE., MD., DC., VA., FL.,
WVA., NC., SC., KY., TN., GA., AL., MS.

Dr. Gordon Foster
University of Miami
School of Education
P.O. Box 8065
Coral Gables, Fla. 33124
(305) 284-3213

AREA D: TX., LA., AR.

Dr. Blandina Cardenas
Intercultural Development Research Assn.
114 Glenview Drive, West
Suite 118
San Antonio, Texas 78228
(512) 736-4353

AREA F: NM., AZ., NV.

Dr. Ray Rodriguez
University of New Mexico
School of Education
Albuquerque, New Mexico
87131
(505)277-5706

AREA H: That part of Ca. not included
in Area G.

Dr. Roberto Cruz
Berkeley Unified School District
1414 Walnut Street
Berkeley, Ca..
94709
(415)644-6187

July 8, 1975 or

AREA I: WA., OR., ID., AK.,
HI., GU., TRUST TERR.,
AMER. SAMOA.

Dr. Antonio Fernandez, Actg. Dir.
Northwest Regional Educational Laboratory
Lindsay Building/710 SW Second Avenue
Portland, Oregon 97204
(503) 248-6805

E. Equal Educational Opportunity Act of 1974 (Excerpts), 20 U.S.C. Secs. 1703, 1706, 1708-10

PART 2—UNLAWFUL PRACTICES

§ 1703. Denial of equal educational opportunity prohibited

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this chapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

Pub.L. 93–380, Title II, § 204, Aug. 21, 1974, 88 Stat. 515.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1706. Civil actions by individuals denied equal educational opportunities or by Attorney General

An individual denied an equal educational opportunity, as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this chapter referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

Pub.L. 93–380, Title II, § 207, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1708. Jurisdiction of district courts

The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 1706 of this title.

Pub.L. 93–380, Title II, § 209, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1709. Intervention by Attorney General

Whenever a civil action is instituted under section 1706 of this title by an individual, the Attorney General may intervene in such action upon timely application.

Pub.L. 93–380, Title II, § 210, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1710. Civil actions by Attorney General; notice of violations; certification respecting undertaking appropriate remedial action

The Attorney General shall not institute a civil action under section 1706 of this title before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part 2 of this subchapter; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

Pub.L. 93–380, Title II, § 211, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

F. Bilingual Education Act of 1974, 20 U.S.C. 880b *et seq.*

BILINGUAL EDUCATIONAL PROGRAMS

81 Stat. 816; 84 Stat. 151. 20 USC 880b.

SEC. 105. (a)(1) Title VII of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

Bilingual Education Act, 20 USC 880b note.

"TITLE VII—BILINGUAL EDUCATION

"SHORT TITLE

"SEC. 701. This title may be cited as the 'Bilingual Education Act'.

"POLICY; APPROPRIATIONS

20 USC 880b.

"SEC. 702. (a) Recognizing—

"(1) that there are large numbers of children of limited English-speaking ability;

"(2) that many of such children have a cultural heritage which differs from that of English-speaking persons;

"(3) that a primary means by which a child learns is through the use of such child's language and cultural heritage;

"(4) that, therefore, large numbers of children of limited English-speaking ability have educational needs which can be met by the use of bilingual educational methods and techniques; and

"(5) that, in addition, children of limited English-speaking ability benefit through the fullest utilization of multiple language and cultural resources,

the Congress declares it to be the policy of the United States, in order to establish equal educational opportunity for all children (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, and (B) for that purpose, to provide financial assistance to local educational agencies, and to State educational agencies for certain purposes, in order to enable such local educational agencies to develop and carry out such programs in elementary and secondary schools, including activities at the preschool level, which are designed to meet the educational needs of such children; and to demonstrate effective ways of providing, for children of limited English-speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language.

"(b)(1) Except as is otherwise provided in this title, for the purpose of carrying out the provisions of this title, there are authorized to be appropriated $135,000,000 for the fiscal year ending June 30, 1974; $135,000,000 for the fiscal year ending June 30, 1975; $140,000,000 for the fiscal year ending June 30, 1976; $150,000,000 for the fiscal year ending June 30, 1977; and $160,000,000 for the fiscal year ending June 30, 1978. Appropriation.

"(2) There are further authorized to be appropriated to carry out the provisions of section 721(b)(3) $6,750,000 for the fiscal year ending June 30, 1974; $7,250,000 for the fiscal year ending June 30, 1975; $7,750,000 for the fiscal year ending June 30, 1976; $8,750,000 for the fiscal year ending June 30, 1977; and $9,750,000 for the fiscal year ending June 30, 1978. Post, p. 507.

"(3) From the sums appropriated under paragraph (1) for any fiscal year—

"(A) the Commissioner shall reserve $16,000,000 of that part thereof which does not exceed $70,000,000 for training activities carried out under clause (3) of subsection (a) of section 721, and shall reserve for such activities 33⅓ per centum of that part thereof which is in excess of $70,000,000; and

"(B) the Commissioner shall reserve from the amount not reserved pursuant to clause (A) of this paragraph such amounts as may be necessary, but not in excess of 1 per centum thereof, for the purposes of section 732. Post, p. 510.

"DEFINITIONS; REGULATIONS

"SEC. 703. (a) The following definitions shall apply to the terms used in this title: 20 USC 880b-1.

"(1) The term 'limited English-speaking ability', when used with reference to an individual, means—

"(A) individuals who were not born in the United States or whose native language is a language other than English, and

"(B) individuals who come from environments where a language other than English is dominant, as further defined by the Commissioner by regulations;

and, by reason thereof, have difficulty speaking and understanding instruction in the English language.

"(2) The term 'native language', when used with reference to an individual of limited English-speaking ability, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

"(3) The term 'low-income' when used with respect to a family means an annual income for such a family which does not exceed the low annual income determined pursuant to section 103 of title I of the Elementary and Secondary Education Act of 1965. Ante, p. 488.

"(4)(A) The term 'program of bilingual education' means a program of instruction, designed for children of limited English-speaking ability in elementary or secondary schools, in which, with respect to the years of study to which such program is applicable—

"(i) there is instruction given in, and study of, English and, to the extent necessary to allow a child to progress effectively through the educational system, the native language of the children of limited English-speaking ability, and such instruction is given with appreciation for the cultural heritage of such children, and, with respect to elementary school instruction, such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to progress effectively through the educational system; and

"(ii) the requirements in subparagraphs (B) through (E) of this paragraph and established pursuant to subsection (b) of this section are met.

English-speaking children, enrollment.

"(B) A program of bilingual education may make provision for the voluntary enrollment to a limited degree therein, on a regular basis, of children whose language is English, in order that they may acquire an understanding of the cultural heritage of the children of limited English-speaking ability for whom the particular program of bilingual education is designed. In determining eligibility to participate in such programs, priority shall be given to the children whose language is other than English. In no event shall the program be designed for the purpose of teaching a foreign language to English-speaking children.

"(C) In such courses or subjects of study as art, music, and physical education, a program of bilingual education shall make provision for the participation of children of limited English-speaking ability in regular classes.

"(D) Children enrolled in a program of bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

Application.

"(E) An application for a program of bilingual education shall be developed in consultation with parents of children of limited English-speaking ability, teachers, and, where applicable, secondary school students, in the areas to be served, and assurances shall be given in the application that, after the application has been approved under this title, the applicant will provide for participation by a committee composed of, and selected by, such parents, and, in the case of secondary schools, representatives of secondary school students to be served.

Definitions.

"(5) The term 'Office' means the Office of Bilingual Education.

"(6) The term 'Director' means the Director of the Office of Bilingual Education.

"(7) The term 'Council' means the National Advisory Council on Bilingual Education.

Model programs.

"(b) The Commissioner, after receiving recommendations from State and local educational agencies and groups and organizations involved in bilingual education, shall establish, publish, and distribute, with respect to programs of bilingual education, suggested models with respect to pupil-teacher ratios, teacher qualifications, and other factors affecting the quality of instruction offered in such programs.

"(c) In prescribing regulations under this section, the Commissioner shall consult with State and local educational agencies, appropriate organizations representing parents and children of limited English-speaking ability, and appropriate groups and organizations representing teachers and educators involved in bilingual education.

"PART A—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

"BILINGUAL EDUCATION PROGRAMS

Grants.
20 USC 880b-7.

"SEC. 721. (a) Funds available for grants under this part shall be used for—

"(1) the establishment, operation, and improvement of programs of bilingual education;

"(2) auxiliary and supplementary community and educational activities designed to facilitate and expand the implementation of programs described in clause (1), including such activities as (A) adult education programs related to the purposes of this title, particularly for parents of children participating in programs of bilingual education, and carried out, where appropriate, in coordination with programs assisted under the Adult Education Act, and (B) preschool programs preparatory and supplementary to bilingual education programs;

80 Stat. 1191;
Post, p. 576.
20 USC 1201 note.

"(3)(A) the establishment, operation, and improvement of training programs for personnel preparing to participate in, or personnel participating in, the conduct of programs of bilingual education and (B) auxiliary and supplementary training programs, which shall be included in each program of bilingual education, for personnel preparing to participate in, or personnel participating in, the conduct of such programs; and

"(4) planning, and providing technical assistance for, and taking other steps leading to the development of, such programs.

Application.

"(b)(1) A grant may be made under this section only upon application therefor by one or more local educational agencies or by an institution of higher education, including a junior or community college, applying jointly with one or more local educational agencies (or, in the case of a training activity described in clause (3)(A) of subsection (a) of this section, by eligible applicants as defined in section 723). Each such application shall be made to the Commissioner at such time, in such manner, and containing such information as the Commissioner deems necessary, and

Post, p. 508.

"(A) include a description of the activities set forth in one or more of the clauses of subsection (a) which the applicant desires to carry out; and

"(B) provide evidence that the activities so described will make substantial progress toward making programs of bilingual education available to the children having need thereof in the area served by the applicant.

Approval.

"(2) An application for a grant under this part may be approved only if—

"(A) the provision of assistance proposed in the application is consistent with criteria established by the Commissioner, after consultation with the State educational agency, for the purpose of achieving an equitable distribution of assistance under this part within the State in which the applicant is located, which criteria shall be developed by his taking into consideration (i) the geographic distribution of children of limited English-speaking ability, (ii) the relative need of persons in different geographic areas within the State for the kinds of services and activities described in subsection (a), (iii) with respect to grants to carry out programs described in clauses (1) and (2) of subsection (a) of section 721, the relative ability of particular local educational agencies within the State to provide such services and activities, and (iv) with respect to such grants, the relative numbers of persons from low-income families sought to be benefitted by such programs;

"(B) in the case of applications from local educational agencies to carry out programs of bilingual education under clause (1) of subsection (a) of section 721, the Commissioner determines that not less than 15 per centum of the amounts paid to the applicant for the purposes of such programs shall be expended for auxiliary and supplementary training programs in accordance with the provisions of clause (3)(B) of such subsection and section 723;

Post, p. 508.

"(C) the Commissioner determines (i) that the program will use the most qualified available personnel and the best resources and will substantially increase the educational opportunities for children of limited English-speaking ability in the area to be served by the applicant, and (ii) that, to the extent consistent with the number of children enrolled in nonprofit, nonpublic schools in the area to be served whose educational needs are of the type which the program is intended to meet, provision has been made for participation of such children; and

"(D) the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Commissioner.

"(3)(A) Upon an application from a State educational agency, the Commissioner shall make provision for the submission and approval of a State program for the coordination by such State agency of technical assistance to programs of bilingual education in such State assisted under this title. Such State program shall contain such provisions, agreements, and assurances as the Commissioner shall, by regulation, determine necessary and proper to achieve the purposes of this title, including assurances that funds made available under this section for any fiscal year will be so used as to supplement, and to the extent practical, increase the level of funds that would, in the absence of such funds be made available by the State for the purposes described in this section, and in no case to supplant such funds.

Ante, p. 503.

"(B) Except as is provided in the second sentence of this subparagraph, the Commissioner shall pay from the amounts authorized for these purposes pursuant to section 702 for each fiscal year to each State educational agency which has a State program submitted and approved under subparagraph (A) such sums as may be necessary for the proper and efficient conduct of such State program. The amount paid by the Commissioner to any State educational agency under the preceding sentence for any fiscal year shall not exceed 5 per centum of the aggregate of the amounts paid under this part to local educational agencies in the State of such State educational agency in the fiscal year preceding the fiscal year in which this limitation applies.

"(c) In determining the distribution of funds under this title, the Commissioner shall give priority to areas having the greatest need for programs assisted under this title.

"INDIAN CHILDREN IN SCHOOLS

20 USC 880b-8.

"SEC. 722. (a) For the purpose of carrying out programs under this part for individuals served by elementary and secondary schools operated predominantly for Indian children, a nonprofit institution or organization of the Indian tribe concerned which operates any such school and which is approved by the Commissioner for the purposes of this section may be considered to be a local educational agency as such term is used in this title.

Payments.
Ante, p. 503.

"(b) From the sums appropriated pursuant to section 702(b), the Commissioner is authorized to make payments to the Secretary of the Interior to carry out programs of bilingual education for children on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The terms upon which payments for such purpose may be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the policy of section 702(a).

Annual report to Congress and President.

"(c) The Secretary of the Interior shall prepare and, not later than November 1 of each year, shall submit to the Congress and the President an annual report detailing a review and evaluation of the use, during the preceding fiscal year, of all funds paid to him by the Commissioner under subsection (b) of this section, including complete fiscal reports, a description of the personnel and information paid for in whole or in part with such funds, the allocation of such funds, and the status of all programs funded from such payments. Nothing in this subsection shall be construed to relieve the Director of any authority or obligation under this part.

Assessment of needs of Indian children, submittal to Congress and President.

"(d) The Secretary of the Interior shall, together with the information required in the preceding subsection, submit to the Congress and the President, an assessment of the needs of Indian children with respect to the purposes of this title in schools operated or funded by the Department of the Interior, including those State educational agencies and local educational agencies receiving assistance under the Johnson-O'Malley Act (25 U.S.C. 452 et seq.) and an assessment of the extent to which such needs are being met by funds provided to such schools for educational purposes through the Secretary of the Interior.

49 Stat. 1458.

"TRAINING

20 USC 880b-9.
Ante, p. 506.

"SEC. 723. (a)(1) In carrying out the provisions of clauses (1) and (3) of subsection (a) of section 721, with respect to training, the Commissioner shall, through grants to, and contracts with, eligible applicants, as defined in subsection (b), provide for—

"(A)(i) training, carried out in coordination with any other programs training auxiliary educational personnel, designed (I) to prepare personnel to participate in, or for personnel participating in, the conduct of programs of bilingual education, including programs emphasizing opportunities for career development, advancement, and lateral mobility, (II) to train teachers, administrators, paraprofessionals, teacher aides, and parents, and (III) to train persons to teach and counsel such persons, and (ii) special training programs designed (I) to meet individual needs, and (II) to encourage reform, innovation, and improvement in applicable education curricula in graduate education, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school facilities, as related to bilingual education; and

"(B) the operation of short-term training institutes designed to improve the skills of participants in programs of bilingual education in order to facilitate their effectiveness in carrying out responsibilities in connection with such programs.

Fellowships.

"(2) In addition the Commissioner is authorized to award fellowships for study in the field of training teachers for bilingual education. For the fiscal year ending June 30, 1975, not less than 100 fellowships leading to a graduate degree shall be awarded under the preceding sentence for preparing individuals to train teachers for programs of bilingual education. Such fellowships shall be awarded in proportion to the need for teachers of various groups of individuals with limited English-speaking ability. For each fiscal year after June 30, 1975, and prior to July 1, 1978, the Commissioner shall report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate on the number of fellowships in the field of training teachers for bilingual education which he recommends will be necessary for that fiscal year.

Report to congressional committees.

Stipends.

"(3) The Commissioner shall include in the terms of any arrangement described in paragraphs (1) and (2) of subsection (a) of this section provisions for the payment, to persons participating in training programs so described, of such stipends (including allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs.

"(4) In making grants or contracts under this section, the Commissioner shall give priority to eligible applicants with demonstrated competence and experience in the field of bilingual education. Funds provided under grants or contracts for training activities described in this section to or with a State educational agency, separately or jointly, shall in no event exceed in the aggregate in any fiscal year 15 per centum of the total amount of funds obligated for training activities pursuant to clauses (1) and (3) of subsection (a) of section 721 in such year.

Ante, p. 506.

"(5) An application for a grant or contract for preservice or inservice training activities described in clause (A)(i)(I) and clause (A)(ii)(I) and in subsection (a)(1)(B) of this section shall be considered an application for a program of bilingual education for the purposes of subsection (a)(4)(E) of section 703.

Ante, p. 504.

"Eligible applicants."

"(b) For the purposes of this section, the term 'eligible applicants' means—

"(1) institutions of higher education (including junior colleges and community colleges) which apply, after consultation with, or jointly with, one or more local educational agencies:

"(2) local educational agencies; and

"(3) State educational agencies.

"PART B—ADMINISTRATION

"OFFICE OF BILINGUAL EDUCATION

Establishment.
20 USC 880b-10.

"SEC. 731. (a) There shall be, in the Office of Education, an Office of Bilingual Education (hereafter in this section referred to as the 'Office') through which the Commissioner shall carry out his functions relating to bilingual education.

"(b)(1) The Office shall be headed by a Director of Bilingual Education, appointed by the Commissioner, to whom the Commissioner shall delegate all of his delegable functions relating to bilingual education.

"(2) The Office shall be organized as the Director determines to be appropriate in order to enable him to carry out his functions and responsibilities effectively.

Report to Congress and President.

"(c) The Commissioner, in consultation with the Council, shall prepare and, not later than November 1 of 1975, and of 1977, shall submit to the Congress and the President a report on the condition of bilingual education in the Nation and the administration and operation of this

title and of other programs for persons of limited English-speaking ability. Such report shall include—

Contents.

"(1) a national assessment of the educational needs of children and other persons with limited English-speaking ability and of the extent to which such needs are being met from Federal, State, and local efforts, including (A) not later than July 1, 1977, the results of a survey of the number of such children and persons in the States, and (B) a plan, including cost estimates, to be carried out during the five-year period beginning on such date, for extending programs of bilingual education and bilingual vocational and adult education programs to all such preschool and elementary school children and other persons of limited English-speaking ability, including a phased plan for the training of the necessary teachers and other educational personnel necessary for such purpose;

"(2) a report on and an evaluation of the activities carried out under this title during the preceding fiscal year and the extent to which each of such activities achieves the policy set forth in section 702(a);

"(3) a statement of the activities intended to be carried out during the succeeding period, including an estimate of the cost of such activities;

"(4) an assessment of the number of teachers and other educational personnel needed to carry out programs of bilingual education under this title and those carried out under other programs for persons of limited English-speaking ability and a statement describing the activities carried out thereunder designed to prepare teachers and other educational personnel for such programs, and the number of other educational personnel needed to carry out programs of bilingual education in the States and a statement describing the activities carried out under this title designed to prepare teachers and other educational personnel for such programs; and

"(5) a description of the personnel, the functions of such personnel, and information available at the regional offices of the Department of Health, Education, and Welfare dealing with bilingual programs within that region.

"NATIONAL ADVISORY COUNCIL ON BILINGUAL EDUCATION

Establishment.
20 USC 880b-11.
Post, p. 575.
Membership.

"SEC. 732. (a) Subject to part D of the General Education Provisions Act, there shall be a National Advisory Council on Bilingual Education composed of fifteen members appointed by the Secretary, one of whom he shall designate as Chairman. At least eight of the members of the Council shall be persons experienced in dealing with the educational problems of children and other persons who are of limited English-speaking ability, at least one of whom shall be representative of persons serving on boards of education operating programs of bilingual education. At least three members shall be experienced in the training of teachers in programs of bilingual education. At least two members shall be persons with general experience in the field of elementary and secondary education. At least two members shall be classroom teachers of demonstrated teaching abilities using bilingual methods and techniques. The members of the Council shall be appointed in such a way as to be generally representative of the significant segments of the population of persons of limited English-speaking ability and the geographic areas in which they reside.

"(b) The Council shall meet at the call of the Chairman, but, notwithstanding the provisions of section 446(a) of the General Education Provisions Act, not less often than four times in each year.

64 Stat. 172; 86 Stat. 326. 20 USC 1233e. Duties.

"(c) The Council shall advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration and operation of this title, including the development of criteria for approval of applications, and plans under this title, and the administration and operation of other programs for persons of limited English-speaking ability. The Council shall prepare and, not later than November 1 of each year, submit a report to the Congress and the President on the condition of bilingual education in the Nation and on the administration and operation of this title, including those items specified in section 731(c), and the administration and operation of other programs for persons of limited English-speaking ability.

Report to Congress and President. Ante, p. 509.

Personnel procurement.

"(d) The Commissioner shall procure temporary and intermittent services of such personnel as are necessary for the conduct of the functions of the Council, in accordance with section 445, of the General Education Provisions Act, and shall make available to the Council such staff, information, and other assistance as it may require to carry out its activities effectively.

Post, p. 575.

"PART C—SUPPORTIVE SERVICES AND ACTIVITIES

"ADMINISTRATION

20 USC 880b-12.

"SEC. 741. (a) The provisions of this part shall be administered by the Assistant Secretary, in consultation with—

"(1) the Commissioner, through the Office of Bilingual Education; and

"(2) the Director of the National Institute of Education, notwithstanding the second sentence of section 405(b)(1) of the General Education Provisions Act;

86 Stat. 328. 20 USC 1225.

in accordance with regulations.

"(b) The Assistant Secretary shall, in accordance with clauses (1) and (2) of subsection (a), develop and promulgate regulations for this part and then delegate his functions under this part, as may be appropriate under the terms of section 742.

Infra.

"RESEARCH AND DEMONSTRATION PROJECTS

Bilingual education research.

"SEC. 742. (a) The National Institute of Education shall, in accordance with the provisions of section 405 of the General Education Provisions Act, carry out a program of research in the field of bilingual education in order to enhance the effectiveness of bilingual education programs carried out under this title and other programs for persons of limited English-speaking ability.

Competitive contracts.

"(b) In order to test the effectiveness of research findings by the National Institute of Education and to demonstrate new or innovative practices, techniques, and methods for use in such bilingual education programs, the Director and the Commissioner are authorized to make competitive contracts with public and private educational agencies, institutions, and organizations for such purpose.

"(c) In carrying out their responsibilities under this section, the Commissioner and the Director shall, through competitive contracts with appropriate public and private agencies, institutions, and organizations—

"(1) undertake studies to determine the basic educational needs and language acquisition characteristics of, and the most effective

conditions for, educating children of limited English-speaking ability;

"(2) develop and disseminate instructional materials and equipment suitable for use in bilingual education programs; and

"(3) establish and operate a national clearinghouse of information for bilingual education, which shall collect, analyze, and disseminate information about bilingual education and such bilingual education and related programs.

"(d) In carrying out their responsibilities under this section, the Commissioner and the Director shall provide for periodic consultation with representatives of State and local educational agencies and appropriate groups and organizations involved in bilingual education.

Appropriations.

"(e) There is authorized to be appropriated for each fiscal year prior to July 1, 1978, $5,000,000 to carry out the provisions of this section.".

Effective date. 20 USC 880b note.

(2)(A) The amendment made by this subsection shall be effective upon the date of enactment of this Act, except that the provisions of part A of title VII of the Elementary and Secondary Education Act of 1965 (as amended by subsection (a) of this section) shall become effective on July 1, 1975, and the provisions of title VII of the Elementary and Secondary Education Act of 1965 in effect immediately prior to the date of enactment of this Act shall remain in effect through June 30, 1975, to the extent not inconsistent with the amendment made by this section.

Ante, p. 505.

81 Stat. 816; 84 Stat. 151. 20 USC 880b.

(B) The National Advisory Council on Bilingual Education, for which provision is made in section 732 of such Act, shall be appointed within ninety days after the enactment of this Act.

20 USC 880b-11 note. Ante, p. 505.

(b) Section 703(a) of title VII of such Act is amended by adding at the end thereof the following:

"Other programs for persons of limited English-speaking ability."

"(8) The term 'other programs for persons of limited English-speaking ability' when used in sections 731 and 732 means the program authorized by section 708(c) of the Emergency School Aid Act and the programs carried out in coordination with the provisions of this title pursuant to section 122(a)(4)(C) and part J of the Vocational Education Act of 1963, and section 306(a)(11) of the Adult Education Act, and programs and projects serving areas with high concentrations of persons of limited English-speaking ability pursuant to section 6(b)(4) of the Library Services and Construction Act.".

Ante, p. 504. 86 Stat. 360. 20 USC 1607. Post, p. 607. Post, p. 578. Post, p. 609.

STATUTE OF LIMITATIONS

SEC. 106. Title VIII of the Elementary and Secondary Education Act of 1965 is amended by inserting after section 803 the following new section:

79 Stat. 57; 81 Stat. 816; 84 Stat. 152. 20 USC 881.

"STATUTE OF LIMITATIONS ON REFUND OF PAYMENTS

20 USC 884.

"SEC. 804. No State or local educational agency shall be liable to refund any payment made to such agency under this Act (including title I of this Act) which was subsequently determined to be unauthorized by law, if such payment was made more than five years before such agency received final written notice that such payment was unauthorized.".

Ante, p. 488.

G. Federal Expenditures on Bilingual Education in Fiscal Year 1973, "DHEW Expenditures on Bilingual Education," American Education, DHEW, Office of Education, July, 1974

FEDERAL FUNDS

DHEW Expenditures on Bilingual Education

According to the 1970 Census, about five million youngsters in this country come from homes in which the language generally spoken is something other than English. A number of these youngsters speak English, of course, but estimates based on recent samplings in several States are that between 1.8 and 2.5 million others need bilingual education.

A series of Congressional hearings in 1965 officially recognized the plight of the non-English-speaking student, and in January of 1967, the Elementary and Secondary Education Act of 1965 was amended to include the Bilingual Education Program as Title VII. This program provides funds to local education agencies to meet the special education needs of children of ages three to 18 whose lack of familiarity with English is a social handicap. The bilingual technique makes use of two languages—English and the one the child uses at home; the student drills in listening, speaking, reading, writing, and other academic skills, and learns about the history and culture associated with his or her other language.

With $35 million in Fiscal Year 1973 Title VII funds available, the program has continued 209 demonstration projects in the current 1973-74 school year. These projects represent 24 languages and serve approximately 129,000 students. Special centers also work toward developing curriculums, amassing material, and sharing results of good practices. In FY 74 the bilingual appropriation, originally $50 million, jumped to $60 million with the release of $10 million from FY 73 funds. Awards for the 1974-75 school year are now in process.

While Title VII is the best known source of funding for bilingual education projects, other DHEW sources have provided more than $31 million in funding for a variety of projects. Of this amount the U.S. Office of Education alone has spent almost $28 million under various pieces of legislation for special projects, all tied to the bilingual effort. A breakdown of those expenditures along with authorizing legislation and brief project descriptions follows:

☐ Under Title III, Sec. 309(b) of the Adult Education Act, $1,683,425 was awarded to administer 16 special demonstration projects. These used a mixed bilingual and English as a Second Language (ESL) approach and ranged from setting up a model program and reception center for newly arrived parents of bilingual children to helping a group of working adults who had basic educational deficiencies.

☐ Under Part D of the Education Professions Development Act, 12 colleges or universities received nearly $3 million in assistance to train educational personnel and to improve the quality of bilingual training programs.

☐ The Elementary and Secondary Education Act also does some bilingual funding under its Title III. In FY 73, nine States and Puerto Rico used $1,626,405 (part of their State Plan money) for 19 programs that included preschool proficiency approaches and planning and developing curriculums to meet the specific needs of non-English-speaking, central-city students and their bilingual teachers.

☐ The Emergency School Aid Act includes funds earmarked especially for bilingual programs to meet the needs of children who do not have equality of educational opportunity because of language and cultural differences. In FY 1973, $8,888,013 was spent under this set-aside for 39 projects in 12 States and the District of Columbia. Out of the Assistant Secretary's Discretionary funds, Sec. 708(a), some $2,839,000 was spent for four programs with major bilingual/bicultural components in the Commonwealth of Puerto Rico and the outlying Territories. Also, under the ESAA educational television set-aside, $4,768,730 was spent to develop a bilingual/bicultural television series for children. Total ESAA funding for bilingual education was $16,395,743.

☐ The Follow Through Program, authorized by Title II of the Economic Opportunity Act, focuses on kindergarten or elementary school children who were previously enrolled in Head Start or similar programs. In FY 73, more than $3 million supported nine programs working with this early age group or on materials for them.

☐ Working at the preschool level, the Bureau of Education for the Handicapped supported three bilingual projects under part C of the Education for the Handicapped Act at a cost of $190,041. Under Part E of the same Act, BEH spent $134,893 on research in the area of bilingual education for the handicapped.

☐ Title IV, Part B of the Education Amendments of 1972—better known as the Indian Education Act—awarded $932,544 for six bilingual/bicultural projects to improve educational opportunities for Indian children.

☐ The Right to Read effort works to make all reading programs more effective and to increase functional literacy throughout the United States. From its FY 73 budget, Right to Read spent $951,500 on 16 community based projects in 14 States and the District of Columbia and on nine school based projects in seven States. These projects used a bilingual or an ESL approach, or a combination of the two.

The National Institute of Education spent in FY 73 a total of $3,037,539 to fund bilingual/bicultural research and curriculum development projects. And the Office of Child Development, another agency in the DHEW collection, spent $746,000 on projects relating to bilingual education.

Total DHEW expenditures on Bilingual Education and/or ESL projects for FY 1973 amounted to nearly $67 million. Additional funds are being spent for bilingual education under certain other authorities but at this writing it has not been possible to isolate the exact amounts.

In the coming years it seems likely that funding for bilingual education will increase both at the Federal and the local level. This was assured by a recent Supreme Court decision (Lau v. Nichols) which affirmed the responsibility of Local Educational Agencies to comply with Title VI of the 1964 Civil Rights Act. According to HEW Under Secretary Frank C. Carlucci, the HEW guidelines on this act require that "school districts take affirmative action to rectify the language deficiencies of limited and non-English-speaking children in such a fashion that they may enjoy equal access to the education opportunities provided to all other students by the school." ☐

DHEW EXPENDITURES ON BILINGUAL EDUCATION AND/OR ESL—FISCAL YEAR 1973*

AGENCY/PROGRAM	BILINGUAL	MIXED†	TOTALS
Office of Education			**63,116,251**
ESEA Title VII	35,130,000		
Adult Education		1,683,425	
EPDA	2,820,603		
ESEA Title III	1,626,405		
ESAA	16,395,743		
Follow Through	3,251,097		
Handicapped	324,934		
Indian Education	932,544		
Right To Read		951,500	
National Institute of Education			**3,037,539**
Research	988,157		
Curriculum Development	2,049,382		
Office of Child Development			**746,004**
Project Headstart	143,500		
Children's Bureau	602,504		
DHEW Grand Total			**66,899,794**

*Additional funds are being spent for bilingual and/or ESL instruction under certain other authorities where amounts could not be isolated. These include ESEA Title I; Adult Education State Plan Program Section 304 and Teacher Training, Section 309 (c); ESAA Basic authority, Section 705; and Vocational Education State Plan Program, Title I, Part B

†Bilingual and ESL approaches

H. List of Federal Laws (and Implementing Regulations) with Some Funding for Bilingual Education

Title VII of the Elementary and Secondary Education Act, 20 U.S.C. §§880b, 880b-1, 880b-8 - 880b-12

Department grant appeals process, 45 CFR 16.1 et seq. and Appendices.

Direct project grant and contract programs, 45 CFR 100a.10 et seq.

Indirect costs under program, 45 CFR 100c.1 et seq.

Financial assistance, policies and procedures, 45 CFR 123.1.

Project Applications, 45 CFR 123.4, 123.13

Funding Policies, 45 CFR 123.22.

Adult Education, 20 U.S.C. §§1201-1211a.

Grant policies and procedures, 45 CFR 166.1 et seq. Appendix (amended 40 Fed. Reg. 17950, April 23, 1975).

Special experimental demonstrations projects, 45 CFR 167.1 et seq.

State administered programs, 45 CFR 100b.10 et seq.

Departmental grant appeals process, 45 CFR 16.1 et seq.

Direct project grant and contract programs 45 CFR 100a.10 et seq.

Financial assistance policies and procedures, 45 CFR 188.1 et seq.

Education Professions Development Act - Part D - 20 U.S.C. §§1119, 1119a, 1119a-1, 1119b-2.11.

Departmental grant appeals process, 45 CFR 16.1 et seq. and Appendices.

Direct project grant and contract programs, 45 CFR 100a.10 et seq.

Emergency school assistance program, 45 CFR 181.1 et seq.

Elementary and Secondary Education Act (Title III), 20 U.S.C. 241c.

Applicability and procedures for assistance, 45 CFR 116.1 et seq.

Emergency School Aid Act, 20 U.S.C. §§1607, 1610.

Grant and contract policies and procedures, 45 CFR 185.51 to 185.56, 185.61 to 185.65, 185.91 to 185.95 (amended, 40 Fed. Reg. 14166, March 28, 1975).

Follow Through Program, Economic Opportunity Act, 42 U.S.C. 2809(2).

Program grantee financial management, 45 CFR 1068.1 et seq.

Refunding, 45 CFR 1067.2-1 et seq.

Education for the Handicapped Act, Subchapter III, 20 U.S.C. §§1421-1426.

Departmental grant appeals process, 45 CFR 16.1 et seq. and Appendices.

Direct project grant and contract programs, 45 CFR 100a.10 et seq.

Program and project policies and procedures, 45 CFR 121.200 to 121.205, 121.250 to 121.256.

Education for the Handicapped Act, Subchapter V, 20 U.S.C. §§1441-1444.

Department grant appeals process, 45 CFR 16.1 et seq. and Appendices.

Direct project grant and contract programs, 45 CFR 100a.10 et seq.

Program and project policies and procedures, 45 CFR 121.400 to 121.426.

Indian Education Act, 20 U.S.C. §§238-240.

Applicability and procedures for assistance, 45 CFR 115.1 et seq.

National Reading Improvement Program, 20 U.S.C. §§1901, 1921, 1941-1944, 1961-1963, 1981, 1982.

Program and project policies and procedures, 45 CFR 151.

National Institute of Education, 20 U.S.C. 1221e

Programs providing financial assistance, 45 CFR parts 186 to 188.

Vocational Education Act of 1963, 20 U.S.C. §§1281-1284, 1301-1305, 1391.

Grants and Contract Awards, 45 CFR 103.1 et seq.

Children's Bureau, 42 U.S.C. §§191-194.

Project Headstart, 42 U.S.C. §§2702, 2809.

Program grantee financial management, 45 CFR 1068.1 et seq.

Refunding, 45 CFR 1067.2-1 et seq.

Library Services and Construction Act, 20 U.S.C. 351(d)(4)

Library Services and Construction, 45 CFR 130.4, 130.16, 130.17, 130.18a (amended 40 Fed. Reg. 25013, June 12, 1975).

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*In using these citations, it is important to check for amendments.

I. Aida Waserstein, "Organizing for Bilingual Education: One Community's Experience," reprinted from 19 *Inequality in Education* 23 (February, 1975)

Organizing for Bilingual Education:

ONE COMMUNITY'S EXPERIENCE

by Aida Waserstein

In September 1973, there were at least 481 Spanish-surnamed children in the Wilmington, Delaware, public schools,[1] over half of whom did not speak or comprehend enough English to function in an all-English classroom.[2] Yet, there were only three bilingual teachers in the entire school system working with Spanish-speaking students. Today, slightly over a year later, there is a $500,000 program funded through local and federal monies, with a staff of over forty bilingual people to respond to the needs of these students. In addition to the twenty-three teachers, there is a curriculum developer, a social worker, two guidance counselors, a psychiatrist, a nurse, and thirteen paraprofessionals recruited from the local Spanish-speaking community.[3]

This article will describe the negotiation process which culminated in the establishment of a bilingual education program in Wilmington. It will mention the kinds of problems which were encountered and discuss some of the major policy decisions that were made during its development. Finally, the article will consider why negotiation rather than litigation was selected as the vehicle to achieve a bilingual program.

Getting Into The System And Finding The Facts

Although there were several students at Wilmington High School who did not speak enough English even to find their classrooms, the school had decided to discontinue its "English as a Second Language" (ESL) program on the grounds that there were "not enough" Spanish-speaking children to "warrant" continuation of the program. According to the high school administration, there were only "fourteen or seventeen" Puerto Rican students in the school. After a census was taken, it was learned that there were actually ninety-three Puerto Rican students, of whom thirty-three did not comprehend enough English to function in a regular classroom.[4]

In response to a call from a local youth worker, who brought the above to my attention, I began meeting informally with interested parents, educators and community leaders to discuss the problem. Ultimately a task force emerged to serve as a negotiating team and to become the core of the Parent and Community Council which monitors the performance of the bilingual program.

Our first task was to get information on what was happening in the school system. We visited schools and talked with students, teachers, and administrators, asking them to verbalize their complaints and to indicate what kinds of resources they needed. In gatherings with high school students, for example, we encouraged them to write short essays either in English or Spanish describing what problems they encountered in school. These essays were later included in a proposal for federal funds, to help document the need for a bilingual program.

The school visits were useful because they provided us with first-hand information and helped to align potentially divisive forces to the need for greater efforts in bilingual education. In relating to the three Spanish-speaking teachers, for instance, we explained that our goal was not to minimize the work that they were already doing for the Spanish-speaking community, but to point out the deficiencies in the existing system in order to obtain additional resources. But most importantly these visits revealed that, with a few exceptions, most of the teachers and administrators lacked information about the Spanish-speaking students and seemed to have little concern for the problem. Like the main character in Ralph Ellison's novel, the Spanish-speaking student was "...invisible...simply because people refuse[d] to see..." her/him.[5]

An example of this lack of visibility is the fact that the top administrators in the system did not know that the total enrollment of Spanish-speaking students had doubled from 1967 to 1969, and again from 1971 to 1973, and that Spanish-speaking students constituted 10-12% of the total enrollment of some of the schools.[6] In addition, the person in charge of attendance claimed that Spanish-speaking children were not dropping out at the middle school level (6th-8th grade) because it was not "legal" to drop out before age 16. He could not, however, account for the children who had enrolled each September but were missing by the end of the academic year. Finally, the person who was head of personnel at the time apparently had received no "official" requests from the principals for Spanish-speaking teachers. Therefore, he claimed that there was no need for them and that if there were a need he would have no trouble finding them. Apparently, he was not aware that there is a scarcity of trained bilingual education personnel.

This lack of visibility was also evident in daily school life. Because the school environment was very frustrating for the Spanish-speaking child, s/he was likely to attend less often and to drop out earlier than his or her Anglo peers.[7] When s/he came to school, s/he had little opportunity for participation because the classroom and extra-curricular activities were conducted in English, a language which s/he did not understand. In the classroom, s/he was often relegated to the back of the room where s/he was out of the monolingual teacher's way but where s/he was also less likely to benefit from academic instruction.[8] Because an inability to communicate with the teachers prevented the learning of new concepts appropriate for the student's grade level, s/he fell behind academically. And, since s/he could not communicate with peers, his or her circle of friends was limited to those who speak Spanish. S/he was, thus, segregated from the rest of the student body.

In addition, the school system's failure to provide supportive resources and to stress the positive value of the Spanish-speaking student's culture and language had negative consequences for the child's self-image. In a totally English-speaking environment, his or her native speech was regarded as a "disadvantage" and cultural differences as "defects". The ability for positive self-appraisal was undermined and this, in turn, weakened his or her motivation to succeed socially and academically. School was, in essence, an alien and cold environment where s/he felt as an outsider.[9]

These findings, among others, led us to the conclusion that we wanted a bilingual-bicultural program with at least these three components: instruction to enable the student to learn English, academic instruction in Spanish, and instruction in Puerto Rican history and culture[10] to encourage a sense of identity, pride and self-respect.

Group Work With The Spanish-speaking Community

In the development of our bilingual education project it was essential both to continually utilize the resources of the Spanish-speaking community and to keep the channels of communication open with those people and with others outside that community. The first was important because it enabled the work to be a group endeavor rather than the effort of a sole individual. The second was necessary to clarify potential misconceptions and to generate local support for the creation of a bilingual program.

As a legal services attorney, I felt it necessary to work closely in a group effort with community members and with individuals from agencies which are supposed to serve the Spanish-speaking community. As a result, the key people in our negotiating team included a Spanish-speaking parent, a former elementary school teacher who had worked with Puerto Rican children, two youth workers who had direct contact with high school students, and an administrator from the local community college who had had some experience in negotiating with the school system.[11] Their first-hand knowledge of the community and the school system was invalu-

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ble. It helped us to understand the bounds of what was feasible to accomplish in each community meeting and in each negotiating session, and enabled us to develop strategies which were successful.

The process of keeping open the channels of communication included the holding of regular meetings and the dissemination of information through frequent letters, written in English and in Spanish, to a mailing list of almost one hundred interested people. The purpose of these communications was to keep all appraised of the current status and progress of our efforts. In addition to almost weekly work meetings which were open to anyone who was interested, we held large community meetings on the average of every two or three months. These meetings were held in school buildings located within the Spanish-speaking community so that participants could walk there, and were conducted bilingually.

Prior to each negotiating session, the work meetings were used to plan strategy, to clarify goals and to define the bounds of possible compromise for the forthcoming negotiations. In addition, there usually was a second meeting held one or two hours before each negotiating session, designed to inform individuals attending that session of our strategy, and to enable the members of the group to operate as a coordinated unit during the negotiations.

Two obstacles were a continuing problem in our efforts to encourage community involvement. The first one was the difficulty in obtaining the participation of Puerto Rican parents, and in maintaining their interest in a long-range project. Among others, reasons for this are that the parents had many other daily problems which needed their immediate attention, and the fact that they had not had much experience in the processes of community organization and negotiation. Due to their lack of experience in those areas which seemed remote from their daily lives, they were reluctant to attend meetings and to take an active part in making decisions. The second obstacle was the difficulty in getting leaders from various segments of the community to overcome their personal differences and work on a common project.

Although not directly related to the question of bilingual education, these problems were real and needed to be addressed by our group. In order to encourage parental participation we relied on personal, face-to-face contact and worked through established institutions such as the church, the schools and the local community center. We made ourselves visible in the community by attending social functions in places where Spanish-speaking people gather. We tried to be available to help meet other more immediate needs and worked on short-range goals to maintain interest and achieve small measures of success. Without this, people would have become discouraged in waiting for the duration of our long-term project. We thus became more attuned to the life of the community and developed a relationship of trust with its members. Finally, we tried to overcome the problems of fragmentation and divisiveness by continually keeping in touch with all the segments of the community and encouraging them to contribute their ideas. Many of these ideas were, in fact, incorporated into the proposals and strategies for negotiations.

These extensive efforts were successful in helping facilitate continuing contact with the community and in encouraging participation by as many people as possible. Our negotiating team for any particular session, for example, usually included a minimum of ten people who were associated with community groups and social agencies in the city. Furthermore, the meetings also served as a mechanism whereby the community and agency people could further develop their own skills in planning strategy, in exercising effective leadership and in coordinating a common effort. As a result of this joint endeavor the Spanish-speaking community is now better able to act on its own behalf than it was in the fall of 1973.

Negotiations With The School Administration

Although the school system was not unalterably opposed to addressing the problems of the Spanish-speaking students, our task force knew that it was not likely to move on its own initiative. In addition to the daily problems of maintaining a large bureaucracy, the system was in the midst of a massive desegregation suit. Therefore, the task force undertook the task of defining the problem, focusing attention on it, developing an approach and making the system adopt resolution of this problem as one of its top priorities. Through the several months of extensive negotiations with school administrators, our group acted as a catalyst and as a continuing source of pressure to make the problem visible and to force the school system to do its job of educating Spanish-speaking students.

The three main elements of the negotiation process were: identification and effective use of available resources, continuing direct contact with personnel within the school system, and persistence.

In order to benefit from available resources, we visited established programs in other cities and used them as models. We learned how those programs worked, how they were set up, what materials they used, and other relevant information. These visits helped us to understand what exists in the area of bilingual education. We became the local "experts" on bilingual education and the school system began to rely on us for help in deciding important policy questions. This gave us access to the system's decision-making process and influence over its outcome.

In addition, the visits to other programs gave us the opportunity to explore the difficulties existing programs were facing. As a result, we planned our program with those potential problems in mind and tried to alleviate the seriousness of their impact here. For instance, we knew that other programs had been designed as experimental programs which provide intensive services for only a small portion of the target population, and that in some areas the programs suffered because they were perceived as "remedial" services for the "disadvantaged". We also knew that there is a scarcity of trained bilingual education personnel and of materials developed for Puerto Rican children living in the continental United States, because most bilingual materials were designed for Chicano children in the Southwest.

Thus, we designed our program to affect *all* the Spanish-speaking children who need its services and we emphasized that instead of being a "remedial" undertaking, this program is an acknowledgment of the fact that ours is a multicultural, multilingual society and that Spanish-speaking people have a valuable contribution to make to the entire society. We also held a two-hour evening meeting in one of the local schools for the purpose of generating applications for jobs that would become available in the bilingual program. The meeting was conducted in Spanish and English and bilingual literature regarding job descriptions and required qualifications was available. School administrators were also present to answer applicants' questions.

The second component, continuing contact with school personnel, helped us develop a working relationship with people in key positions. The tenor of our contacts with the administrators varied. Sometimes our group served as a source of information and support to the administration which needed our "expertise" because we knew the community, we knew the problem and we knew what kinds of alternatives were available. At other times, we were unrelenting adversaries pitted against the administration; adversaries who turned every issue into a bargainable point and who presented non-negotiable demands. But we never allowed the negotiations to stop. At all times, there was an on-going relationship which added to the official recognition of our group as one which had the right to demand that the system be accountable.

This process of increasing accountability was central to our negotiations. In essence, it was a way of eliciting the school administration's commitment little by little. With each new commitment, no matter how small, we knew that we were gaining strength, that we were adding on to our prior accomplishments and that the system felt a greater responsibility to respond to us. The following is an example of this kind of process: At our second meeting with top school administrators, we mentioned that the two neighboring states, Pennsylvania and New Jersey, were each getting almost one million dollars a year in Title VII ESEA funds for bilingual education and that it was unfortunate that Delaware was not receiving any funds from this federal resource. One of the top administrators mentioned that maybe the thing to do was to draft a proposal, and that maybe our group should work on that endeavor. We took him up on it and started gathering data for such a proposal. A week later, the same administrator received a letter from us stating that, although we were willing to help, only the school system had the ability to gather much of the necessary data and that it was essential that it assign a full-time staff person to draft the proposal. After some additional pressure from other agencies which, in response to our request, had started to inquire about the status of Spanish-speaking children in the school system, the staff assignment was made and two proposals were submitted to the federal government.

Once the proposals were in, we started negotiating for the hiring of a full-time adminstrator who would work on a temporary basis until the permanent bilingual director was hired, and who would start immediate planning for implementation of the program. We emphasized that, after all the work which had been done in drafting the proposals, it would be a mistake to jeopardize the program's effectiveness by failing to engage in adequate planning. Once the temporary coordinator was hired, we knew that we would have a program even if no federal funds were granted because it would now be harder for the school district to regress to the point of having no program at all for the Spanish-speaking students. It is interesting to note that, at first, some school personnel resented us for being "outsiders" who were challenging their "educational expertise". However, once the temporary coordinator was hired, this became "their" program and things began to move a little more smoothly.

The third component, persistence, for our group meant long hours, extensive meetings, and the ability to stay together to complete a long-range project. Persistence was important in helping us understand the personalities of those with whom we had to deal, in deciding who and/or what needed follow-up and how that follow-up should occur, and in helping us extract information that was not readily available but which was important to our negotiations. In short, it was our persistence which enabled us to clearly assess the situation and to speed up the process of obtaining our goals.

Moreover, persistence was essential because it helped us establish that our position was firm, that we expected explicit answers and definite timetables in response to our demands, and that we were not going to give up just because it was a lot of work nor because it took a long time. This last message was particularly important because the school system knew that there are community groups which complain with great furor and publicize issues but fail to follow-up to ensure implementation of a solution. The system's general method for dealing with these goups is to allow the outburst of complaints and then wait it out until the commotion dies down.

Why a Suit Was Never Filed

From the beginning, we considered the possibility of filing a suit on behalf of the Spanish-speaking children. Indeed, that was the original motivation for my visit to the schools in September of 1973.

At that time *U.S.* v. *Texas*[12] and *Serna* v. *Portales Municipal Schools*,[13] both district court opinions, provided strong precedent in favor of such a suit. In *U.S.* v. *Texas* the court, which had previously found that there had been *de jure* segregation and had ordered the consolidation of a new school district, noted:

> [There is] . . . the need . . . for special educational consideration to be given to the Mexican-American students in assisting them in adjusting to those parts of their new school environment which presents a cultural and linguistic shock. Equally clear, however, is the need to avoid the creation of a stigma of inferiority akin to the "badges and indicia of slavery" . . . to avoid this result the Anglo-American students too must be called upon to adjust to their Mexican-American classmates, and to learn to understand and appreciate their different linguistic and cultural attributes.[14]

In that case, the court ordered the creation of a unitary school system in which" . . . neither English nor Spanish is presented as a more valued language . . ."[15] and the implementation of a ". . . bilingual-bicultural instructional program which utilizes the child's language system (English, Spanish, or a blend of both) as a medium of instruction as proficiency in one or more additional language systems is developed."[16]

In *Serna*, it was conceded that the educational program at the predominately Mexican-American school was ". . . substantially the equivalent . . ."[17] of that offered at the other three elementary schools. Nevertheless, the court found that there was a denial of equal educational opportunity. The court based its holding on the fact that the curriculum was tailored to the needs of children from an English-speaking background without regard to the needs of children from backgrounds where Spanish is the predominant language spoken.[18] On the other hand, *Morales* v. *Shannon*,[19] and *Lau* v. *Nichols*,[20] which had yet to reach the Supreme Court, had held that the school system had no special responsibility toward the non-English-speaking student.

In short, these two courts were extremely reluctant to interfere in the educational process, a position likely to find favor with the courts in Delaware. And, in three out of the four cases already mentioned, the test used by the court was whether the school board had engaged in affirmative discriminatory action or had perpetuated the effects of any past *de jure* segregation. Because the Spanish-speaking community is relatively young and small and there is little history of past overt segregation regarding that community, it would have been difficult to prove discriminatory state action in Wilmington, Delaware.

In Wilmington, the discrimination lay in the school's present inaction and it had two kinds of manifestations. First, because the Spanish-speaking children were tested in English, they were probably disproportionately represented in the lower tracks. Proof of such a pattern would have constituted evidence of discrimination under *Hobson* v. *Hansen*.[21] However, it might have been difficult to obtain reliable statistics to demonstrate this fact because there was such a small sample of Spanish-speaking children in the system. And, since an even smaller number of children continued school past the elementary or middle school level, it would have been even harder to show that the children were locked into the low tracks. The fact that the black and poor children had little opportunity to escape the low tracks had been an important consideration in *Hobson*.[22]

Second, the Wilmington school system was discriminating against Spanish-speaking school children because it was failing to correct the language deficiency which they brought with them into the classroom. The essence of this argument is that in providing only monolingual English teachers, tests and textbooks, the school is treating all children as if they had the same English proficiency when, in fact, they do not. This approach had been successful in *Serna* v. *Portales* but not in *Morales* or *Lau*. In the latter case, the Court of Appeals noted that the student's language deficiency had not been caused by state action and concluded:

> The board's responsibility to non-English students under the Equal Protection Clause, . . . extends no

CIRCLES
BRUSH YOUR TEETH
Joe wants my wagon
Joe quiere mi carro
What do I do?
¿Qué hago?
I say, "Let's take turns."
Yo digo, "Vamos a turnarnos."
Joe makes the wagon go
Joe echa andar el carro

Drawing by Joe Lasker from *What Do I Do?* (English/Spanish Edition) by Norma Simon, Chicago: Albert Whitman & Company (© 1969).

> further than to provide them with the same facilities, textbooks, teachers, and curriculum as are provided to other children in the district.[23]

In deciding whether or not to file a suit in the fall of 1973, consideration was given to the judicial precedents mentioned above and to the fact that *Lau* was pending before the U.S. Supreme Court. Because of that Court's decision in *San Antonio Independent School District* v. *Rodriguez*,[24] (education is not a fundamental right for equal protection purposes) the most recent Supreme Court decision in the education area at that time, it was difficult to predict that the plaintiffs would eventually prevail in *Lau*.

For these reasons, it was decided that, instead of initially relying on the judicial process for redress of the Spanish-speaking students' grievances, we would work on creating alternative remedies. Passage of state legislation providing for bilingual education was rejected as an alternative because our small group was not prepared for such a time-consuming process and because we felt that the Spanish-speaking community in Delaware is too small to exert the kind of political pressure necessary.

Since lack of funds was the main obstacle to the creation of a program and since Delaware had never received Title VII money for bilingual education, we decided to help the school system draft a proposal for such funds with built-in legal safeguards. There is, for instance, language in the proposal guaranteeing that the students will be taught English, will have academic instruction in Spanish for all who need it, and there will be activities relating to Puerto Rican and other Latin cultures. Moreover, since our group forms the core of the Parent and Community Council, we have continuing access to information regarding the program and can exert influence over its present implementation.

Looking back at the results obtained during the last year, it is fortunate that we refrained from suing at the outset. The filing of a suit could have served as a starting point for negotiating with the school system. However, it would also have set up a clearly adversarial position. It would have made it more difficult to get first-hand information about existing conditions in the school system and, because the school personnel would have felt very threatened, it would have seriously undermined the possibility of cooperation in setting up a program. Moreover, if we had started by filing a suit and had quickly obtained a favorable decision, there would, at best, be an order requiring that the school system initiate a program. That much we were able to accomplish by means of negotiations. We feel that refraining from filing a suit, pending the results of the negotiations, enabled us to get quicker results and have more influence on a day-to-day basis regarding key policy decisions. However, the threat of a suit was an effective weapon, because the school system knew that we were ready and able to go to court if that became necessary.

Conclusion

There is neither a set technique for creating a bilingual program nor a foolproof approach to encourage community participation. The strategies used by our group were developed in response to the issues which were faced at each stage in our efforts. Our approach worked for us here, and it worked in the recent past. It is hard to know whether it would be successful for another group, at another place, or at another time. The most that can be expected is that the reporting of our experience will help others to develop strategies to meet the needs of their particular situation.

FOOTNOTES

[1] Delaware Department of Public Instructions, September 30, 1973, *Racial and Ethnic Report Pupil Enrollment*, (October 29, 1973) pp.4–5.

[2] This percentage is derived from statistics cited by the school system in its application for federal funds. Under the heading "Facility in English Communication," the application notes that there were 260 children rated "poor", 150 rated "average" and 107 rated "good". "Poor" was defined as requiring "most, if not all, academic instruction in Spanish", "average" as operating with "most, if not all, academic instruction in English" and "good" as requiring no academic instruction in Spanish. See *Application for Assistance Under Title VII of the Elementary and Secondary Education Act (ESEA)* (hereinafter "ESEA Application") (February 7, 1974) p. 20.

[3] Although small and relatively young, the Spanish-speaking community is growing at a rapid rate in Wilmington. In 1963 there were about 610 Puerto Ricans in Wilmington, comprising 0.7% of the total population. More recent estimates indicate that the size has risen to 6,000 or to 7.5% of the city's present population. According to the 1970 federal census, there were only about 2,000 Spanish-surnamed people in Wilmington. However, estimates from agency personnel serving the community indicate that the figure is between 6,000 and 8,000. See *Application* for *ESEA* funds p. 19.

[4] Meeting on September 21, 1973, at Wilmington High School.

[5] Ralph Ellison, *The Invisible Man*, (New York: Random House, 1974), p. 3.

[6] See *ESEA Application* (1974) p. 19. There are fourteen elementary schools, four middle schools, and three high schools in Wilmington. Although all but one have Spanish-speaking children, the bulk of these students are located in four elementary schools, two middle schools, and one high school.

[7] The school district's drop-out rate for all high school students is 5.4%. The official rate for Spanish-speaking students at the Wilmington High School is 28.6%. See *ESEA Application* (1974) p. 22. However, the latter statistic does not present an accurate picture because it does not include those who drop-out *before* entering high school or those who fail to attend school but are not officially counted as drop-outs because they do not withdraw through formal procedures.

It is more realistic to note that teachers who had followed the progress of their students after they had left the elementary school level, reported that many Puerto Rican children actually dropped out as early as the sixth and seventh grade. In addition, only twenty-two Spanish surnamed students graduated from Wilmington High School from 1969 to 1973 (1969–4; 1970–6; 1971–2; 1972–4; 1973–6). See *ESEA Application* (1974) p. 21. This suggests a very high drop-out rate because the school system's office of Research and Planning estimates that as early as 1969 there were already as many as sixty-eight Spanish surnamed students in that high school.

[8] A former elementary school teacher reported that English-speaking teachers in her school often seated Puerto Rican children in the back of the classroom where they would be inconspicuous. It is understandable that this kind of arrangement was more convenient for the monolingual teacher who had to worry about teaching an entire class and about controlling its behavior. After all, she could not reach a Spanish-speaking child whose language and culture she did not understand, and it was easier to have her seated quietly in the back of the room. However, such an arrangement did not do much to advance that Spanish-speaking child's academic education.

Similar findings have been made by the U.S. Commission on Civil Rights. In "Teachers and Students, Report V: Mexican-American Education Study, Differences in Teacher Interaction with Mexican-American and Anglo Students" (hereinafter "Report V") (March, 1973) p. 43, the Commission concludes: "The total picture that emerges from this study of classroom interaction is one in which Mexican-American students are ignored compared to their Anglo counterparts."

[9] The United States Commission on Civil Rights reports a similar pattern among Chicano students in the Southwest. It notes:

> In effect, the language and cultural background of Mexican-American students is virtually excluded from the school programs in the Southwest.
>
> This exclusion takes its toll on the attitudes and achievement of Chicano pupils . . . The omission of their culture, values and familiar experiences from the design of the educational program causes many Mexican-American pupils to feel that the school is an alien environment with little relevance to them. These early school experiences of Chicanos thus set in motion the cycle of lowered interest, decreased participation, poor academic performance, and lowered self-esteem which is so difficult to break in the later school years. The schools bear major responsibility for this cycle of educational failure.

See *Report V* (March, 1973) p.44.

[10] There were some students from Cuba, Santa Domingo and other Spanish-speaking countries. However, most were from Puerto Rico. Therefore, we decided to emphasize Puerto Rican culture and include other Latin and Caribbean cultures when appropriate.

Moreover, there is an emphasis on a two-way exchange. In addition to teaching the Spanish-speaking students about Anglo-American and Afro-American culture, its goal also is to teach the Anglo students about Latin culture.

[11] The following is an example of the importance of listening to local people who have negotiated with the system in the past: one of these people expressed frustration over the fact that the system is always willing to use the community to help it get federal funds but is unwilling to use its own local funds and that reliance on federal funds alone is unwise because, when those funds end, one is left without a program. As a result of this comment, we developed a two-pronged strategy: helping the school system obtain federal moneys *and* demanding that there be a local commitment to the program. At present, part of the program is funded through Title VII and part is through local money.

[12] 342 F. Supp. 24 (E.D. Tex. 1971), affirmed 447 F. 2d 441 (5th Cir. 1971), 466 F. 2d 518 (5th Cir. 1972).

[13] 351 F. Supp. 1279 (D.C. N.M. 1972).

[14] *U.S.* v. *Texas* p. 38.

[15] *Ibid* p. 30.

[16] *Ibid* p. 31.

[17] *Serna* p. 1281.

[18] See *Serna* p. 1282.

[19] 366 F. Supp. 813 (E.D. Tex. 1973).

[20] 483 F. 2d. 791 (9th Cir. 1973), *reversed* 414 U.S. 563 (1974).

[21] 269 F. Supp. 401 (D.D.C. 1967) *Sub. nom. Smuck* v. *Hobson*, 408 F. 2d 175 (D.C. Cir. 1969).

[22] *Ibid* pp. 468-70, 476.

[23] *Lau* pp. 798-99.

[24] 93 S. Ct 1278 (1973).

VII. State Laws

The Massachusetts Transitional Bilingual Education Act, passed in 1972, was the first mandatory bilingual education law. Set out with the law are the relevant program regulations. Also included is the Texas bilingual law. The enactment of a state law does not end all the problems. As to the Massachusetts experience, see Roos and Roos, "The Massachusetts Transitional Bilingual Education Act: Problems in the Classroom and Possible Legislative Responses," 19 *Inequality in Education* 38 (February, 1975). The Texas experience is detailed in the motion for further relief filed in *United States* v. *State of Texas*, C.A. No. 5281, E.D. Tex., July 3, 1975. See page 117, *supra*.

The final item in this section is a listing of relevant state laws. Be certain to check for changes in the law when using this material. A more detailed compilation of laws, titled "The Current Status of U.S. Bilingual Education Legislation," prepared by staff of the Lawyers' Committee for Civil Rights Under Law, was published in May, 1975. It is available for $3.50 from the Center for Applied Linguistics, 1611 North Kent Street, Arlington, Va. 22209.

A. Massachusetts Transitional Bilingual Education Law and Implementing Regulations, Mass. Gen. Laws Ch. 71A

CHAPTER 71A
TRANSITIONAL BILINGUAL EDUCATION

Section 1: Declaration of policy ____ 8

Section 2: Amendment of Chapter 71A ____ 8

- **Section 1:** Definition of terms ____ 8
- **Section 2:** Census mandate ____ 9
- **Section 3:** Notification to parents or guardians ____ 10
- **Section 4:** Collaborative programs ____ 10
- **Section 5:** Curriculum and administrative mandates ____ 10
- **Section 6:** Certification of teachers ____ 11
- **Section 7:** Pre-school or summer programs ____ 12
- **Section 8:** Reimbursemet of program expenses ____ 12
- **Section 9:** Powers and duties of the Department of Education ____ 13

Section 3: Authorization for reimbursement ____ 13

Section 4: Establishment of Bureau of Transitional Bilingual Education; its powers and duties ____ 13

Section 5: Repeal of Chapter 852 ____ 14

CHAPTER 71A
TRANSITIONAL BILINGUAL EDUCATION

Passed, November 4, 1971
Enacted, February 4, 1972

An act providing for the establishment and implementation of programs in transitional bilingual education in the public schools of the commonwealth, with reimbursement by the commonwealth to cities, towns and school districts to finance the additional costs of such programs.

[Added, 1971, ch. 1005, sect. 1 and sect. 2]

Section 1. *Declaration of policy.* The General Court finds that there are large numbers of children in the commonwealth who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The General Court believes that a compensatory program of transitional bilingual education can meet the needs of these children and facilitate their integration into the regular public school curriculum. Therefore, pursuant to the policy of the commonwealth to insure equal educational opportunity to every child, and in recognition of the needs of children of limited English-speaking ability, it is the purpose of this act to provide for the establishment of transitional bilingual education programs in the public schools, and to provide supplemental financial assistance to help local school districts to meet the extra costs of such programs.

Section 2. The General Laws are hereby amended by inserting after chapter 71 the following chapter:

Section 1. The following words, as used in this chapter shall, unless the context requires otherwise, have the following meanings: —

"Department," the department of education.

"School committee," the school committee of a city, town or regional school district.

"Children of limited English-speaking ability," (1) children who were not born in the United States whose native tongue is a language other than English and who are incapable of performing ordinary classwork in English and (2) children who were born in the United States of non-English speaking parents and who are incapable of performing ordinary classwork in English.

"Teacher of transitional bilingual education," a teacher with a speaking and reading ability in a language other than English in which bilingual education is offered and with communicative skills in English.

"Program in transitional bilingual education," a fulltime program of instruction (1) in all those courses or subjects which a child is required by law to receive and which are required by the child's school committee which shall be given in the native language of the children of limited English-speaking ability who are enrolled in the program and also in English, (2) in the reading and writing of the native language of the children of limited English-speaking ability who are enrolled in the program and in the oral comprehension, speaking, reading and writing of English, and (3) in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English-speaking ability who are enrolled in the program and in the history and culture of the United States.

Section 2. Each school committee shall ascertain, not later than the first day of March, under regulations prescribed by the department, the number of children of limited English-speaking ability within their school system, and shall classify them according to the language of which they possess a primary speaking ability.

When, at the beginning of any school year, there are within a city, town or school district not including children who are enrolled in existing private school systems, twenty or more children of limited English-speaking ability in any such language classification, the school committee shall establish, for each classification, a program in transitional bilingual education for the children therein; provided, however, that a school committee may establish a program in transitional bilingual education with respect to any classification with less than twenty children therein.

Every school-age child of limited English-speaking ability not enrolled in existing private school systems shall be enrolled and participate in the program in transitional bilingual education established for the classification to which he belongs by the city, town or school district in which he resides for a period of three years or until such time as he achieves a level of English language skills which will enable him to perform successfully in classes in which instruction is given only in English, whichever shall first occur.

A child of limited English-speaking ability enrolled in a program in transitional bilingual education may, at the discretion of the school committee and subject to the approval of the child's parent or legal guardian, continue in that program for a period longer than three years.

An examination in the oral comprehension, speaking, reading and writing of English, as prescribed by the department, shall be administered annually to all children of limited English-speaking ability enrolled and participating in a program in transitional bilingual education. No school committee shall transfer a child of limited English-speaking ability out of a program in transitional bilingual education prior to his third year of enrollment therein unless the parents of the child approve the transfer in writing, and unless the child has received a score on said examination which, in the determination of the department, reflects a level of English language skills appropriate to his or her grade level.

If later evidence suggests that a child so transferred is still handicapped by an inadequate command of English, he may be re-enrolled in the program for a length of time equal to that which remained at the time he was transferred.

Section 3. No later than ten days after the enrollment of any child in a program in transitional bilingual education the school committee of the city, town or the school district in which the child resides shall notify by mail the parents or legal guardian of the child of the fact that their child has been enrolled in a program in transitional bilingual education. The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the child is enrolled and shall inform the parents that they have the right to visit transitional bilingual education classes in which their child is enrolled and to come to the school for a conference to explain the nature of transitional bilingual education. Said notice shall further inform the parents that they have the absolute right, if they so wish, to withdraw their child from a program in transitional bilingual education in the manner as hereinafter provided.

The notice shall be in writing in English and in the language of which the child of the parents so notified possesses a primary speaking ability.

Any parent whose child has been enrolled in a program in transitional bilingual education shall have the absolute right, either at the time of the original notification of enrollment or at the close of any semester thereafter, to withdraw his child from said program by written notice to the school authorities of the school in which his child is enrolled or to the school committee of the city, town or the school district in which his child resides.

Section 4. A school committee may allow a non-resident child of limited English-speaking ability to enroll in or attend its program in transitional bilingual education and the tuition for such a child shall be paid by the city, town, or the district in which he resides.

Any city, town or school district may join with any other city, town, school district or districts to provide the programs in transitional bilingual education required or permitted by this chapter.

The commonwealth, under section eighteen A of chapter fifty-eight, shall reimburse any city, town or district for one-half of the cost of providing transportation for children attending a program in transitional bilingual education outside the city, town or district in which they reside.

Section 5. Instruction in courses of subjects included in a program of transitional bilingual education which are not mandatory may be given in a language other than English. In those courses or subjects in which verbalization is not essential to an understanding of the subject matter, including but not necessarily limited to art, music and physical education, children of limited English-speaking ability shall participate fully with their English-speaking contemporaries in the regular public school classes provided for said subjects. Each school committee of every city, town or school district shall ensure to children enrolled in a program in transitional bilingual education practical and meaningful opportunity to participate fully in the extra-curricular activities of the regular public schools in the city, town or district. Programs in transitional bilingual education shall, whenever feasible, be located in the regular public schools of the city, town or the district rather than separate facilities.

Children enrolled in a program of transitional bilingual education whenever possible shall be placed in classes with children of approximately the same age and level of educational attainment. If children of different age groups or educational levels are combined, the school committee so combining shall ensure that the instruction given each child is appropriate to his or her level of educational attainment and the city, town or the school districts shall keep adequate records of the educational level and progress of each child enrolled in a program. The maximum student-teacher ratio shall be set by the department and shall reflect the special educational needs of children enrolled in programs in transitional bilingual education.

Section 6. The board of education, hereinafter called the board, shall grant certificates to teachers of transitional bilingual education who possess such qualifications as are prescribed in this section. The requirements of section thirty-eight G of chapter seventy-one shall not apply to the certification of teachers of transitional bilingual education. Teachers of transitional bilingual education, including those serving under exemptions as provided in this section, shall be compensated by local school committees not less than a step on the regular salary schedule applicable to permanent teachers certified under said section thirty-eight G.

The board shall grant certificates to teachers of transitional bilingual education who present the board with satisfactory evidence that they (1) possess a speaking and reading ability in a language, other than English, in which bilingual education is offered and communicative skills in English; (2) are in good health, provided that no applicant shall be disqualified because of blindness or defective hearing; (3) are of sound moral character; (4) possess a bachelor's degree or an earned higher academic degree or are graduates of a normal school approved by the board; (5) meet such requirements as to courses of study, semester hours therein, experience and training as may be required by the board; and (6) are legally present in the United States and possess legal authorization for employment.

For the purpose of certifying teachers of transitional bilingual education, the board may approve programs at colleges or universities devoted to the preparation of such teachers. The institution shall furnish the board with a student's transcript and shall certify to the board that the student has completed the approved program and is recommended for a teaching certificate.

No person shall be eligible for employment by a school committee as a teacher of transitional bilingual education unless he has been granted a certificate by the board; provided, however, that a school committee may prescribe such additional qualifications, approved by the board. Any school committee may upon its request be exempted from the certification requirements of this section for any school year in which compliance therewith would in the opinion of the department constitute a hardship in the securing of teachers of transitional bilingual education in the city, town or regional school district. Exemptions granted under this section shall be subject to annual renewal by the department.

A teacher of transitional bilingual education serving under an exemption as provided in this section shall be granted a certificate if he achieves the requisite qualifications therefor. Two years of service by a teacher of transitional bilingual education under such an exemption shall be credited to the teacher in acquiring the status of serving at the discretion of the school committee as provided in section forty-one of chapter seventy-one, and said two years shall be deemed to immediately precede, and be consecutive with, the year in which a teacher becomes certified. In requesting an exemption under this section a school committee shall give preference to persons who have certified as teachers in their country or place of national origin.

All holders of certificates and legal exemptions under the provisions of section thirty-eight G of chapter seven-one who provide the board with satisfactory evidence that they possess a speaking and reading ability in a language other than English may be certified under this section as a teacher of transitional bilingual education.

Nothing in this chapter shall be deemed to prohibit a school committee from employing to teach in a program in transitional bilingual education a teacher certified under section thirty-eight G of chapter seventy-one, so long as such employment is approved by the department.

Section 7. A school committee may establish on a full or part-time basis pre-school or summer school programs in transitional bilingual education for children of limited English-speaking ability or join with the other cities, towns, or school districts in establishing such pre-school or summer programs. Pre-school or summer programs in transitional bilingual education shall not substitute for programs in transitional bilingual education required to be provided during the regular school year.

Section 8. The costs of the programs in transitional bilingual education required or permitted under this chapter, actually rendered or furnished, shall, for the amount by which such costs exceed the average per pupil expenditure of the city, town or the school district for the education of children of comparable age, be reimbursed by the commonwealth to the city, town or regional school districts as provided in section eighteen A of chapter fifty-eight.

Reimbursement shall be made upon certification by the department that programs in transitional bilingual education have been carried out in accordance with the requirements of this chapter, the department's own regulation, and approved plans submitted earlier by city, town or the school districts, and shall not exceed one and one-half million dollars for the first year, two and one-half million dollars per year for the second and third years, and four million dollars per year for the fourth and subsequent years of programs in transitional bilingual education. In the event that amounts certified by the department for reimbursement under this section exceed the available state funds therefor, reimbursement of approved programs shall be made based on the ratio of the maximum available state funds to the total funds expended by all of the school committees in the commonwealth.

Nothing herein shall be interpreted to authorize cities, towns or school districts to reduce expenditures from local and federal sources, including monies allocated under the federal Elementary and Secondary Education Act, for transitional bilingual education programs.

The costs of programs in transitional bilingual education, other than those actually reimbursed under this chapter, shall be "reimbursable expenditures" within the meaning of chapter seventy, and shall be reimbursed under said chapter.

Section 9. In addition to the powers and duties prescribed in previous sections of this chapter, the department shall exercise its authority and promulgate rules and regulations to achieve the full implementation of all provisions of this chapter. A copy of the rules and regulations issued by the department shall be sent to all cities, towns and school districts participating in transitional bilingual education.

Section 3. Subsection (b) of chapter 58 of the General Laws is hereby amended by striking out paragraph (3), as appearing in section 7 of chapter 546 of the acts of 1969, and inserting in place thereof the following paragraph:

(3) On or before November twentieth, the reimbursements for the special education programs required to be paid by the commonwealth under chapters sixty-nine, seventy-one and seventy-one A.

Section 4. Chapter 69 of the General Laws is hereby amended by inserting after section 34 under the caption BUREAU OF TRANSITIONAL EDUCATION the following section:

Section 35. There shall be established within the department, subject to appropriation, a bureau of transitional bilingual education which shall be headed by a project director. The project director shall be appointed by the board of education upon the recommendation of the commissioner, and said project director shall have the minimum qualifications of a bachelor degree in either business administration, liberal arts, or science, and shall have at least two years of documented administrative or teaching experience. The project director shall file a quarterly report with the board of education, the clerk of the house of representatives and the clerk of the senate.

The bureau for transitional bilingual education shall be charged with the following duties: (1) to assist the department in the administration and enforcement of the provisions of chapter seventy-one A and in the formulation of the regulations provided for in said chapter; (2) to study, review, and evaluate all available resources and programs that, in whole or in part, are or could be directed toward meeting the language capability needs of children and adults of limited English-speaking ability resident in the commonwealth; (3) to compile information about the theory and practice of transitional bilingual education in the commonwealth and elsewhere, to encourage experimentation and innovation in the field of transitional bilingual education, and to make an annual report to the general court and the governor; (4) to provide for the maximum practicable involvement of parents of children of limited English-speaking ability in the planning, development, and evaluation of transitional bilingual education programs in the districts serving their children, and to provide for the maximum practicable involvement of parents of children of limited English-speaking ability, teachers and teachers' aides of transitional bilingual education, community coordinators, representatives of community groups, educators and laymen knowledgeable in the field of transitional bilingual education in the formulation of policy and procedures relating to the administration of chapter seventy-one A by the commonwealth; (5) to consult with other public departments and agencies, including but not limited to the department of community affairs, the department of public welfare, the division of employment security, and the Massachusetts commission against discrimination, in connection with the administration of said chapter; (6) to make recommendations to the department in the areas of pre-service and in-service training for teachers of transitional bilingual education programs, curriculum development, testing and testing mechanisms, and the development of materials for transitional bilingual education courses; and (7) to undertake any further activities which may assist the department in the full implementation of said chapter.

Section 5. Chapter eight hundred and fifty-two of the acts of nineteen hundred and seventy is hereby repealed.

House of Representatives,
October 26, 1971

REGULATIONS FOR USE IN ADMINISTERING PROGRAMS IN TRANSITIONAL BILINGUAL EDUCATION

Subject Classification	*Regulation No.*
Census	1-7
Identification, Placement Notice, Withdrawal	8-10, 45-47
Reimbursement and Funding	11-19
Program Objectives	20-23, 28
Facilities	21
Bilingual Curriculum	20, 21, 28
Pupil-Teacher Ratio	24
Native-speaking Teacher Aides	25
Grouping Patterns	26
Innovative Practices in Bilingual Classes	27
Bilingual Curriculum	28, 20, 21
Course Credits	29
Community Coordinators	30
Guidance and Adjustment Counselors	31
Local Project Supervisors	32
Evaluation; Local Program Review Committees	33
Pupil Progress Reports	34
Special Education	35
Pre-School, Grade K Programs	36-37
Parent Participation	38-42, 47-48
English-speaking Children	43
Joint Programs	44
Identification, Placement Notice, Withdrawal	45-47
Plans	49-56
Waivers	57

REGULATIONS FOR USE IN ADMINISTERING PROGRAMS IN TRANSITIONAL BILINGUAL EDUCATION

1. All provisions contained within the Transitional Bilingual Education Act, Mass. G.L. Ch. 71A, are hereby incorporated in these regulations by reference.

2. For the 1972-73 school year, school districts participating in the Transitional Bilingual Education program shall comply with the current school census law, Mass. G.L. Ch. 72, Sec. 2, and any regulations and/or guidelines promulgated by the Commissioner of Education respecting the census.

3. For the 1973-1974 school year and thereafter, each school committee shall conduct a census not later than March 1 of each year, of the number of children of limited English-speaking ability resident in the district. Such census shall count children resident in the district both in and out of school. In making such census the school committees shall seek the assistance and cooperation of agencies, organizations, or community groups, public or private, which have access to or information about children of limited English-speaking ability resident in the district. Every effort shall be made to keep the census current.

4. Each school district shall designate one regular employee principally responsible for the school district's census-taking activities under the Act.

5. School or non-school personnel conducting the census shall be able to communicate in the home language of the children being counted.

6. Children of limited English-speaking ability shall mean those children who meet the statutory requirements of native tongue and parentage and who have difficulty performing ordinary classwork in English due to problems handling the English language.

7. Each school district shall classify children of limited English-speaking ability within the district by the language a teacher of Transitional Bilingual Education qualified under Section 6 of the Act and the regulations designates as the child's primary language, or the language a parent of such child identifies as the child's primary language. Such language classifications shall correspond to living foreign languages such as Spanish, Portuguese, Chinese, French, Italian, Greek, etc.

8. A local project director, supervisor, or teacher in charge of Transitional Bilingual Education qualified under Section 6 of the Act and the regulations shall annually evaluate every child considered for placement in Transitional Bilingual Education and determine whether the child is of limited English-speaking ability and therefore eligible for a Transitional Bilingual Education program. Such determination shall be made according to guidelines established by the Bureau of Transitional Bilingual Education, and summarized in a short narrative statement entered in the child's school record. No child shall be placed in the Transitional Bilingual Education program unless such evaluation has been made. Every child determined to be eligible shall be placed in a Transitional Bilingual Education program according to the provisions of Section 3 of the Act. In initially establishing Transitional Bilingual Education programs for all eligible children, priority shall be given to establishment of Transitional Bilingual Education programs for younger children. The parent of any child resident in the school district may request evaluation of his/her child for Transitional Bilingual Education, and the school district shall provide such evaluation upon parental request.

9. When, at the beginning of any school year, there are within a city, town or school district not including children who are enrolled in existing private school systems, twenty or more children of limited English-speaking ability in any such language classification, the school committee shall establish, for each classification, a program in Transitional Bilingual Education for all the children therein; provided, however, that a school committee may establish a program in Transitional Bilingual Education with respect to any classification with less than twenty children therein.

10. No school district shall enroll children of limited English-speaking ability of different primary language backgrounds in the same Transitional Bilingual Education class, without prior approval of the Bureau of Transitional Bilingual Education.

11. The costs of instruction, training and support, including the cost of Transitional Bilingual Education personnel, materials and equipment, tuition, intradistrict transportation, and consultant services, of the children in Transitional Bilingual Education classes under Chapter 71A, shall, for the amount by which such costs exceed the average per pupil expenditure of the school district for the education of children of comparable age, be reimbursed by the Commonwealth. Such reimbursement shall be made only after approval and certification by the Bureau of Transitional Bilingual Education that funds for Transitional Bilingual Educational personnel, materials and equipment, tuition, intra-district transportation and consultant services were actually expended and that Transitional Bilingual Education classes have met the standards and requirements prescribed by the Act and the regulations.

12. An extra cost figure from 250 dollars to 500 dollars per pupil is considered reasonable for reimbursement under the Transitional Bilingual Act. Extra cost figures in excess of 500 dollars per pupil may be reimbursable under the Act. Considerations justifying extra per pupil cost expenditures in excess of 500 dollars will include planning costs of Transitional Bilingual Education programs, newness of programs, rapid expansion of existing programs, curriculum development, and material acquisition.

13. Determination of the extra costs of programs in Transitional Bilingual Education shall be made in conformity with accounting standards now in use, developed and to be developed by the Department of Education.

14. The costs of tuition for teachers or teacher aides training programs, when the teacher or teacher aide will teach or aide in teaching the Transitional Bilingual Education program in the following semester or school year shall be reimbursable up to an amount not exceeding 5 percent of the total reimbursable costs under this Act.

15. Extra costs of providing intra-district transportation for students enrolled in Transitional Bilingual Education programs shall be reimbursable expenses under the Act. However, no intra-district transportation expenses shall be reimbursable unless children of limited English-speaking ability cannot be accommodated within existing intra-district transportation schemes, other state transportation funds are not available, and the Bureau of Transitional Bilingual Education has approved such intra-district transportation as necessary for carrying out the purposes of the Act.

16. No school district shall decrease the level of local expenditure devoted to programs in Transitional Bilingual Education without prior approval of the Bureau of Transitional Bilingual Education.

17. No school district shall divert federal funds now expended on the education of children of limited English-speaking ability to other uses without prior approval of the Bureau of Transitional Bilingual Education. However, school districts may use federal funds for educational programs of benefit to children of limited English-speaking ability not satisfying the definition of Transitional Bilingual Education contained in the Act. It is recommended that federal monies be used for non-reimbursable and non-reimbursed costs of programs in Transitional Bilingual Education and other programs benefitting children of limited English-speaking ability.

18. In the event that reimbursable expenditures under the Act exceed total available state money for reimbursement, local districts shall receive reimbursement calculated as follows:

$$\% \text{ reimbursement} — \frac{\textit{total available state money}}{\text{total reimbursable expenditures under Ch. 71A}}$$

local district reimbursement —— % reimbursement x local reimbursable expenditures.

19. Costs of Transitional Bilingual Education programs other than those actually reimbursed under the Act, shall be "reimbursable expenditures" within the *meaning of* Mass. G.L. Ch. 70, and shall be reimbursed under said Chapter.

20. Programs in Transitional Bilingual Education shall mean a full-time program of instruction (1) in all those courses or subjects which a child is required by law to receive and which are required by the child's school district in the native language of the children of limited English-speaking ability who are enrolled in the program and in English; (2) in the reading and writing of the native language of the children of the program and in the aural comprehension, speaking, reading and writing of English; and (3) in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English-speaking ability who are enrolled in the program and in the history and culture of the United States.

21. Instruction in courses of subjects included in a program of Transitional Bilingual Education which are not mandatory may be given in a language other than English. In those courses or subjects in which verbalization is not essential to an understanding of the subject matter, including but not necessarily limited to art, music and physical education, children of limited English speaking ability shall participate fully with their English-speaking contemporaries in the regular public school classes provided for said subjects. Each school committee of every city, town or school district shall ensure to children enrolled in a program in Transitional Bilingual Education practical and meaningful opportunity to participate fully in the extra-curricular activities of the regular public schools in the school district. Programs in Transitional Bilingual Education shall be located in regular public school rather than separate facilities, unless such location is shown to be not feasible and is approved by the Bureau of Transitional Bilingual Education.

22. Every school-age child of limited English-speaking ability not enrolled in existing private school systems shall be enrolled and participate in the program in Transitional Bilingual Education for a period of three years or until such time as he achieves a level of English language skills which will enable him to perform successfully in classes in which instruction is given only in English, whichever shall first occur. A child of limited English speaking ability enrolled in a program in Transitional Bilingual Education may, at the discretion of the school committee and subject to the approval of the child's parent or legal guardian, be continued in that program for a period longer than three years.

23. Transitional Bilingual Education programs shall be designed and conducted so that students enrolled in such programs can achieve skills in aural comprehension, speaking, reading and writing of English sufficient to perform ordinary classwork in English within the three-year transitional period.

24. The maximum student-teacher ratio shall be 15:1, except that the student-teacher ratio may be 20:1 where a native speaking teacher's aide is assigned to a Transitional Bilingual Education class, or a non-native speaking teacher's aide is assigned to a Transitional Bilingual Education class taught by a native speaker of the primary language of the children enrolled in the Transitional Bilingual Education program.

25. It is highly recommended that native speaking teacher aides be utilized in conjunction with Transitional Bilingual Education programs. Teacher aides should possess a speaking ability in the primary language of the children enrolled in the Transitional Bilingual Education program to which they are assigned. Wherever possible, it is recommended that such teacher aides be paid out of Title I funds, federal Elementary and Secondary Education Act.

26. The age spread in any Transitional Bilingual Education class shall be no more than 3 years from the oldest to the youngest child, except that the age spread in any Transitional Bilingual Education kindergarten class shall be no more than one year from the oldest to the youngest child.

27. The regulations shall be interpreted as encouraging experimentation or innovation in teaching Transitional Bilingual Education classes, including the use of such teaching techniques and devices as open classrooms, team teaching, etc. Programs in Transitional Bilingual Education need not duplicate courses of instruction in English and the native language. Ideas have no language.

28. Children enrolled in programs in Transitional Bilingual Education shall be taught the history and culture of their own background and the history and culture of the United States and to draw upon and balance both. Instruction in history and culture shall not stress memorization but knowledge which will encourage a student to keep and respect his own heritage and draw upon and understand the American way of life.

29. Children of limited English-speaking ability shall receive full regular program credit for all years completed and courses taken in programs for Transitional Bilingual Education. Children of limited English-speaking ability who move from programs in Transitional Bilingual Education of one school or school district to the Transitional Bilingual Education program of another school or school district shall do so without loss of grade.

30. It is highly recommended that school districts utilize full or part time native-speaking community coordinators who shall act as liaisons between the school district and the parents of children of limited English-speaking ability and visit the homes of the children in order to exchange information about the Transitional Bilingual Education program.

31. It is highly recommended that school districts utilize full or part-time native speaking guidance or pupil adjustment counselors in Transitional Bilingual Education programs.

32. School districts participating in Transitional Bilingual Education programs shall take measures to assure adequate administration of the programs. A school district administering a Transitional Bilingual Education program for 200 or more children shall appoint a local project director, supervisor, or teacher in charge for its Transitional Bilingual Education program. The local project director, supervisor, or teacher in charge shall be qualified to teach in a Transitional Bilingual Education program and shall exercise supervisory responsibility over the district's Transitional Bilingual Education program.

33. School districts participating in Transitional Bilingual Education programs shall designate a committee of three or more members, including one or more representatives each from the school administration, Transitional Bilingual Education Program, and Parent Advisory Committee, who shall be responsible for conducting an annual review of the district's Transitional Bilingual Education programs and reporting its conclusions to the Bureau of Transitional Bilingual Education and the school committee. Such committee shall insure the district's awareness of regulations, guidelines, and communications between the Department of Education and the local districts.

34. School districts shall send progress reports to parents of children enrolled in Transitional Bilingual Education programs in the same manner and frequency as progress reports sent to parents of other children enrolled in the school district. Such progress reports shall be written in English and the native language of the parents of children enrolled in the program.

35. Children enrolled in Transitional Bilingual Education programs shall have full access to special and other educational services available to other children in local school districts.

36. Preschool or summer school Transitional Bilingual Education programs shall comply with the statutory definition of Transitional Bilingual Education, except that such preschool or summer Transitional Bilingual Education programs may be full or part-time.

37. A school district may provide a kindergarten program in Transitional Bilingual Education, and the extra costs of such programs shall be reimbursable expenditures under Section 7 of the Act. One year of a kindergarten program in Transitional Bilingual Education may be counted toward the three-year Transitional Bilingual Education programs required or permitted under the Act. School districts are highly encouraged to provide kindergarten programs in Transitional Bilingual Education.

38. For the 1973-74 school year and thereafter, each school district operating a Transitional Bilingual Education program shall establish a Parent Advisory Committee (PAC) on Transitional Bilingual Education. The Parent Advisory Committee shall be comprised of parents of children of limited English-speaking ability enrolled in Transitional Bilingual Education programs. The Parent Advisory Committee shall have at least five members, including one or more representatives from every language group in which Transitional Bilingual Education is conducted in the district. Members of the Parent Advisory Committee shall be selected in a manner which fairly represents the view of parents of children in Transitional Bilingual Education programs.

39. The Parent Advisory Committee shall meet regularly with school officials, and at least once annually with the school committee, to participate in the planning, development and evaluation of the district's Transitional Bilingual Education program. Members of the PAC shall have access to Transitional Bilingual Education program records.

40. The Parent Advisory Committee may appoint subcommittees (sub-PACs) for different language groups and/or schools participating in the district's Transitional Bilingual Education program.

41. After the 1972-1973 school year, no plan shall be approved under this Act which has not been submitted in advance to the chairman and each member of the Parent Advisory Committee.

42. Parents of children of limited English-speaking ability enrolled in Transitional Bilingual Education programs who are members of Title I Parent Advisory Committees shall be eligible to participate on Parent Advisory Committees established under the Act and regulations.

43. Transitional Bilingual Education programs may include children of English-speaking ability subject to the notification and withdrawal provisions of Section 3 of the Act.

44. School districts establishing joint programs under Section 4 of the Act may establish such financial arrangements as they see fit, including tuition arrangements and shall work out equitable reimbursement arrangements with the Bureau of Transitional Bilingual Education and the Department of Education, according to guidelines promulgated by the Department of Education.

45. No later than ten days after the enrollment of any child in a program in Transitional Bilingual Education the school committee of the city, town or the school district in which the child resides shall notify by mail the parents or legal guardian of the child of the fact that their child has been enrolled in a program in Transitional Bilingual Education. The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the child is enrolled and shall inform the parents that they have the right to visit Transitional Bilingual Education classes in which their child is enrolled and to come to the school for a conference to explain the nature of Transitional Bilingual Education. Said notice shall further inform the parents that they have the absolute right, if they so wish, to withdraw their child from a program in Transitional Bilingual Education in the manner as hereinafter provided. The notice shall be in writing in English and the language of which the child of the parents so notified possess a primary speaking ability.

46. It is recommended that notice of enrollment in Transitional Bilingual Education programs be sent to the parents as soon as practicable preferably in the weeks preceding opening of school.

47. Parents shall have an absolute right to withdraw their children from Transitional Bilingual Education programs unconditionally at any time up to one month from the date they receive notice of enrollment. Thereafter, they may exercise their right to withdrawal only at the end or beginning of a semester, or with permission of a teacher of Transitional Bilingual Education qualified under Section 6 of the Act and the regulations.

48. Parents of children of limited English-speaking ability enrolled in Transitional Bilingual Education programs shall have access to their children's individual school records and shall have the right to visit Transitional Bilingual Education classes in which their children are enrolled. Parents shall also have the right to request and receive a conference with a Transitional Bilingual Education teacher qualified under Section 6 of the Act and the regulations, relating to the nature and purposes of the Transitional Bilingual Education program, and their children's progress in school.

49. For the 1972-1973 school year, school districts participating in the Transitional Bilingual Education programs shall submit such letters of intent and plans as may reasonably be required by the Bureau of Transitional Bilingual Education to determine whether the school district is in compliance with the Act and the regulations. For the 1973-1974 school year and thereafter, school districts shall submit letters of intent and plans in accordance with sections 50 through 56 of the regulations.

50. For the 1973-1974 school year and thereafter, school districts shall submit letters of intent for programs in Transitional Bilingual Education to the Bureau of Transitional Bilingual Education by December 1st of the school year preceeding the implementation of a program in Transitional Bilingual Education. Such letter of intent shall contain a short narrative description of the proposed Transitional Bilingual Education program. The Bureau of Transitional Bilingual Education shall provide the school district a response in writing by February 1st of the school year preceeding the implementation of a program in Transitional Bilingual Education.

51. School districts shall submit plans for programs in Transitional Bilingual Education to the Bureau of Transitional Bilingual Education by March 31st of the school year preceeding the implementation of a program in Transitional Bilingual Education. Such plans shall comply with the Act and the regulations and shall contain information required by the Bureau to determine whether the school district is in compliance with the Act and the regulations. Plans shall be submitted in accordance with guidelines and forms to be prepared by the Bureau of Transitional Bilingual Education.

52. Plans shall set forth steps taken towards a census of children of limited English speaking ability resident in the school district.

53. Plans shall describe the ways and means by which a Transitional Bilingual Education program will teach the history and culture of the native land of children of limited English-speaking ability resident in the school district.

54. Allowance shall be made for school districts adopting an 18-month budget for purposes of conversion to a school accounting system by fiscal year.

55. No program in Transitional Bilingual Education shall be eligible for reimbursement which has not submitted a plan approved by the Bureau of Transitional Bilingual Education. The Bureau shall process and approve such plans or recommend changes in such plans by May 15th of the school year preceeding the implementation of a program in Transitional Bilingual Education.

56. Plans submitted for approval of Transitional Bilingual Education programs shall contain Transitional Bilingual Education program projections for the following two school years. Such projections shall be regularly updated for submission with plans for following school years.

57. The Board of Education may upon petition of a school committee waive any of the provisions of these regulations as to any particular district for such time as may to the Board seem reasonable to avoid undue hardship to such district.

REGULATIONS FOR THE CERTIFICATION OF BILINGUAL TEACHERS

I. General Regulations for Certification

1. Application
2. Mandatory certification
3-4. Exemptions from certification
5. Permanence of certificate
6. Substitute teachers
7-8. Definition of "normal schools"
9-11. Course requirements
12. Review of certification regulations
13. Revoking of certificates
14. Verification of competencies in language skills and culture
15-16. Approved programs

II. Specific Regulations for Certificates

1. Elementary School Teachers
2. Secondary School Teachers
3. Special Subject Teachers
4. Special Class Teachers
5. Teachers of Speech- and Hearing-Handicapped
6. Teachers of Deaf

REGULATIONS FOR USE IN ADMINISTERING THE CERTIFICATION OF BILINGUAL TEACHERS

I. *General Regulations for Certification.*

1. An applicant for certification as an elementary, secondary or special subject teacher of Transitional Bilingual Education shall complete and submit an application for such certification on a form provided by the Board of Education.

2. No person shall be employed by a school committee as a teacher of Transitional Bilingual Education unless granted the appropriate certificate by the Board of Education or unless serving under an exemption granted by the Board of Education as provided by #3 and #4 below.

3. A request by a school committee to be exempt for any school year from the requirements of #2 above must be completed on waiver forms supplied by the Board of Education. Requests for such exemptions will be considered only if the individual for whom the waiver is being requested has filed a completed application for certification. Subsequent exemptions for the same individual may be granted the school committee on application if the superintendent attests to the individual's successful teaching performance and if evidence of substantial progress toward meeting certification requirements is provided.

4. Anyone certified or legally exempt under Section 38G of Chapter 71 and legally employed before the date of promulgation of these regulations as a teacher of bilingual education in a program in Transitional Bilingual Education such as that defined in Section 1 of Chapter 71A shall be exempt from the certification requirements in #2 above as a teacher of Transitional Bilingual Education at the level and in the subject of such employment.

5. The certificates issued by the Board of Education under these regulations shall be permanent certificates.

6. A temporary substitute teacher not certified by the Board may be employed by a school committee as a teacher of bilingual education to take the place of a regularly employed teacher of Transitional Bilingual Education who is on leave for less than a school year because of illness or any other authorized reason.

7. The term "normal school" as used in the law shall be interpreted to mean four-year normal school courses.

8. Normal schools must be approved by the Board of Education. Normal schools outside Massachusetts may be approved by the Board if they are approved by the Department of Education/Ministry of Education of the State/Country in which they are operated.

9. Courses in education must be so listed in official publications or so described in official letters of the college or university.

10. Six semester hours of student teaching required for teaching certificates is interpreted to mean only that part of the student teaching program which is devoted to student participation and independent practice.

11. Two semesters or seven months with evidence of contract renewal of paid, continuous, successful teaching experience in a class of Transitional Bilingual Education at the appropriate level may be accepted in lieu of supervised student teaching when validated by the employing superintendent or supervising building principal.

12. Whenever certification regulations promulgated under Section 38G of Chapter 71 are being revised, certification regulations promulgated under Chapter 71A shall be reviewed for possible adaptions. The State Bilingual Advisory Council will be consulted in any such review.

13. A. Any certificate issued by the Board of Education may be revoked for cause. The Board may find cause for revocation by a majority vote at any regular or special meeting if it is found that:

1) The certificate was obtained through fraud or the misrepresentation of material fact.

2) The holder of the certificate is professionally unfit to perform the duties for which certification was granted.

3) The holder of a certificate is convicted in a court of law of seditious or subversive activity in violation of a state or federal law or of a crime involving moral turpitude or of any other crime of such nature that in the opinion of the Board of Education the person so convicted discredits the profession or brings into disrepute the Massachusetts certificate.

B. No certificate shall be revoked unless:

1) The holder is notified by registered mail to the last address listed by the holder in the Bureau of Teacher Certification and Placement of the reasons for revocation and attached thereto a copy of this regulation. Such notification must be issued at least thirty days prior to the effective date of notification in which to request in writing a hearing before the Board of Education on the issue of revocation. If such a request for a hearing is received by the Board of Education, the Board shall set a date for such hearing not later than ninety days after the date of the original notice of revocation. The holder of a certificate may be represented by counsel at such hearing. The hearing will be private but the certificate holder may present such witnesses as may be necessary to rebut the causes alleged for revocation.

2) Within thirty days of the date of the hearing, the Board of Education shall vote on the question of revocation of the certificate. If two-thirds of the membership of the Board shall vote in the affirmative, the holder's certificate shall be revoked. The holder shall be notified of the results of the vote by registered mail to the last address known to the Bureau of Teacher Certification and Placement.

C. Notice of revocation of certification shall be sent to all Massachusetts superintendents of schools and to the certification officers of every state within ten days of the effective date of such revocation.

D. No person whose certificate has been revoked under these regulations may again be certified in Massachusetts except by two-thirds vote of membership of the Board of Education.

14. A school committee or an approved teacher preparatory institution, using criteria established by the Board of Education, may determine that an individual possesses a speaking and reading ability in a language other than English, communicative skills in English and an understanding of the history and culture of the country, territory or geographical area whose spoken language is that in which the candidate possesses such speaking and reading ability. A statement to this effect signed by a superintendent of schools or the appropriate administrator of the preparing institution and approved by the Director of the Bureau of Transitional Bilingual Education may be submitted as evidence that an individual meets this requirement.

15. Graduates of institutions accredited by the National Council for the Accreditation of Teacher Education, NCATE, upon evidence of completion of a program approved for the certification of teachers of bilingual education and recommendation of the preparing institution may be deemed to have completed a preparational program adequate for issuance of the appropriate certificate as a teacher of Transitional Bilingual Education.

16. Graduates of preparatory programs approved by the Board of Education using the guidelines for program approval embodied in the National Association of State Directors of Teacher Education and Certification, NASDTEC, publication *Standards for State Approval of Teacher Education*, may upon evidence of completion of a program approved for the certification of teachers of bilingual education and recommendation of the preparing institution be deemed to have completed a preparational program adequate for the issuance of the appropriate certificate for teachers of Transitional Bilingual Education.

II. *Specific Regulations for Certificates.*

Elementary School Teachers of Transitional Bilingual Education (Kindergarten through Grade VIII).

An applicant for certification as an elementary teacher of Transitional Bilingual Education shall submit evidence of eighteen semester hours in elementary education, not less than six semester hours of which must be in supervised student teaching in a bilingual education class in the elementary grades. The remaining semester hours must include courses covering Methods and Materials in Bilingual Education in Elementary Education and one of the following:

Educational Psychology, including Child Growth and Development,
Philosophy of Education,
Curriculum Development in Bilingual Education in Elementary Education.

Secondary School Teachers of Transitional Bilingual Education (Junior and Senior High Schools).

An applicant for certification as a teacher of Transitional Bilingual Education in the secondary schools shall submit evidence of:

1) Twelve semester hours in Secondary Education, not less than six semester hours of which must be in supervised student teaching in bilingual education in the secondary grades. The remaining semester hours must include courses in Methods and Materials in Bilingual Education in Secondary Education and one or more of the following areas:

Educational Psychology, including Adolescent Growth and Development,
Philosophy of Education,
Curriculum Development in Bilingual Education in Secondary Education

and

2) Eighteen semester hours in one of the following areas: English, History, Geography, Social Studies, Mathematics, Chemistry, Physics, Biology, General Science, Earth Science, one of the foreign languages.

Special Subject Teachers of Transitional Bilingual Education.

An applicant for certification as a special subject teacher of Transitional Bilingual Education shall submit evidence of:

1) Twelve semester hours in Education approved for the preparation of teachers of the special subject. Not less than six semester hours must be in supervised student teaching at the appropriate level. The remaining semester hours must include courses in Methods and Materials in Bilingual Education and one of the following areas:

Education Psychology, including Child and/or Adolescent Growth and Development,
Philosophy of Education,
Curriculum Development in the Special Subject Field

and

2) Eighteen semester hours in one or more of the following areas: Health and Physical Education, Health, Business Subjects, Home Economics, Industrial Arts, Reading, Art, Music, Speech, Driver Education.

Special Class Teachers of Transitional Bilingual Education (Mentally Retarded).

1) An applicant for certification as a special class teacher of Transitional Bilingual Education shall submit evidence of thirty semester hours in Education covering the following areas:

Methods and Materials in Bilingual Education,
Psychology of Subnormal and Unadjusted Children,
Industrial Arts and/or Crafts or Domestic Arts,
Special Class Methods,
Educational Measurements,
Supervised Student Teaching

or

2) Regularly appointed teachers of bilingual education with three years of classroom experience in bilingual education may be certified as teachers of Transitional Bilingual Education by submitting evidence of such experience together with proof of completion of twelve semester hours of:

Psychology of Subnormal and Unadjusted Children,
Special Class Methods,
Educational Measurements,
Industrial Arts and/or Crafts or Domestic Arts.

Teachers of Speech and Hearing Handicapped in Transitional Bilingual Education.

An applicant for certification as a teacher of speech and handicapped in Transitional Bilingual Education shall submit evidence of thirty semester hours of Education. Eighteen of these semester hours shall be distributed over the following six required areas, each of which shall be represented by at least one two-semester-hours course:

Anatomy and Physiology of the Speech and Hearing Mechanism,
Speech Pathology,
Speech Correction, including Laboratory Clinical Practice or Student Teaching,
Speech Reading and Auditory Training, including Laboratory Clinical Practice or Student Teaching,
Phonetics,
Diagnostic Hearing Testing.

The remaining twelve semester hours shall include Methods and Materials in Bilingual Education and any three of the following areas:

Psychology of the Handicapped,
Principles of Teaching Handicapped Children,
Child Development,
Adolescent Development,
Guidance.

Educational Tests and Measurements,
Mental Hygiene.

Teachers of the Deaf in Transitional Bilingual Education.

An applicant for certification as a teacher of the deaf in Transitional Bilingual Education shall submit evidence of thirty semester hours in Education completed within a six-year period. The thirty semester hours must include courses in:

Methods and Materials in Bilingual Education,
The Teaching of Speech to the Deaf,
The Teaching of Language to the Deaf,
Methods of Teaching Elementary School Subjects to the Deaf,
Problems in the Education and Guidance of the Deaf,
Auditory and Speech Mechanism,
Audiometry, Hearing Aids, and Auditory Training,
Methods of Teaching Speechreading to the Deaf and Hard of Hearing,
Observation and Student Teaching,
Psychology of Exceptional Children.

CRITERIA TO DETERMINE BILINGUAL TEACHER COMPETENCIES IN LANGUAGE SKILLS AND CULTURE

I. Authorization 31

II. Criteria 31

1. Requirements of Foreign Service Institute Native or Bilingual Proficiency Rating
2. Requirements of Foreign Service Institute Minimum Professional Proficiency in English
3. Requirements of Culture Competency in English and Other Languages

III. Approval Procedures 32

1. Establishment of Board of Examiners
2. Submission of Plan
3. Responsibilities of Bureau of Transitional Bilingual Education

CRITERIA TO DETERMINE BILINGUAL TEACHER COMPETENCIES IN LANGUAGE SKILLS AND CULTURE

Chapter 71A, Section 6 of the Acts of 1971, Transitional Bilingual Education, establishes requirements for the granting of certificates to teachers of Transitional Bilingual Education who possess such qualifications as are prescribed in the Law. A school committee or an approved teacher preparatory institution, using criteria established by the Board of Education, may determine that an individual possesses a speaking and reading ability in a language other than English, communicative skills in English and an understanding of the history and culture of the country, territory or geographical area whose spoken language is that in which the candidate possesses such speaking and reading ability. A statement to this effect signed by a superintendent of schools or the appropriate administrator of the preparing institution and approved by the Director of the Bureau of Transitional Bilingual Education may be submitted as evidence that an individual meets this requirement.

The Board of Education of the Commonwealth of Massachusetts herein issues criteria to determine a bilingual teacher's competencies in language skills and culture in accordance with Chapter 71A, Section 6, Acts of 1971. The criteria established by the Board of Education as given below are applicable to teachers teaching content in non-English languages and to teachers teaching the language itself and to teachers teaching the culture of the language considered.

1. To determine that an individual possesses a speaking and reading ability in a language other than English he must meet the Foreign Service Institute Native or Bilingual Proficiency rating S-4 and R-4.

S-4. Able to use the language fluently and accurately on all levels normally pertinent to professional needs. Can understand and participate in any conversation within the range of his experience with a high degree of fluency and precision of vocabulary; would rarely be taken for a native speaker, but can respond appropriately even in unfamiliar situations; errors of pronunciation and grammer quite rare; can handle informal interpreting from and into the language.

R-4*. Able to read all styles and forms of the language pertinent to professional needs. With occasional use of a dictionary can read moderately difficult prose readily in any area directed to the general reader, and all material in his special field including official and professional documents and correspondence; can read reasonably legible handwriting without difficulty.

***Note:** Chinese: Special consideration given to languages such as Chinese and Japanese.

2. To determine that an individual possesses communicative skills in English he must meet the Foreign Service Institute Minimum Professional Proficiency S-3 and R-3.

S-3. Able to speak the language with sufficient structural accuracy and vocabulary to participate effectively in most formal and informal conversations on practical, social, and professional topics. Can discuss particular interests and special fields of competence with reasonable ease; comprehension is quite complete for a normal rate of speech; vocabulary is broad enough that he rarely has to grope for a word; accent may be obviously foreign; control of grammar good; errors never interfere with understanding and rarely disturb the native speaker.

R-3. Able to read standard newspaper items addressed to the general reader, routine correspondence, reports and technical material in his special field. Can grasp the essentials of articles of the above types without using a dictionary; for accurate understanding moderately frequent use of a dictionary is required. Has occasional difficulty with unusually complex structures and low-frequency idioms.

3. To determine that an individual possesses an understanding of the history and culture of the country, territory or geographical area whose spoken language is that in which the candidate possesses such speaking and reading ability he must meet the Modern Language Association Statement of Qualification for Teachers of Modern Foreign Languages as adapted below.

An understanding of the cultural and linguistically different people and their culture such as is achieved through travel and residence abroad, through study of systematic descriptions of the other culture, its geography, history, art, social customs, and contemporary civilization.

Approval Procedures

To insure that school committees and approved teacher preparatory institutions meet the criteria established by the Board of Education, the Bureau of Transitional Bilingual Education requires that the following procedures be met:

1. Establish a Board of Examiners to assist the school committee or the approved teacher preparatory institution in verifying possession of the skills and competencies required by law and the proficiency specified in the criteria.

The following guidelines will be observed:

a. The Board of Examiners will be composed of a minimum of three members.

1. The first member shall be an educator who possesses language competency and cultural awareness equivalent to the FSI

ratings S-4 and R-4 and the MLA rating for cultural awareness adopted by the Board of Education.

2. A second member shall be an administrator, and

3. A third shall be a member of the community of the language being examined. The community member shall be chosen by a committee made up of parents and community representatives of the language being served. Parent Advisory Councils should be utilized to implement this requirement.

b. The Board of Examiners may require written examinations of a formal or informal nature to determine competency in reading and writing.

c. The Board of Examiners shall interview each candidate orally to determine speaking facility, awareness of culture and knowledge of history and customs.

d. Appointment to the Board of Examiners shall be by the local school committee or approved teacher preparatory institution renewable each year.

2. Submit in writing to the Bureau of Transitional Bilingual Education a plan stating the methods to be utilized to meet the criteria.

3. The Bureau of Transitional Bilingual Education shall:

a. Approve all plans,

b. Reserve the right to participate in the interview and examination process,

c. Approve evidence attesting that an individual meets all the requirements,

d. Submit a statement of approval that an individual meets all the requirements to the Bureau of Teacher Certification and Placement.

GUIDELINES FOR PARENTAL INVOLVEMENT IN TRANSITIONAL BILINGUAL EDUCATION PROGRAMS

WHEN plans are required ____ 35

HOW the PAC is formed ____ 35

WHY a PAC is needed ____ 36

WHO belongs to the PAC ____ 36

WHAT are the responsibilities of the PAC ____ 37

Appendix — Parent Participation Regulations ____ 38
(Items 38-42 of the Regulations for Administering Programs as provided for in Chapter 71A)

GUIDELINES FOR PARENTAL INVOLVEMENT IN TRANSITIONAL BILINGUAL EDUCATION PROGRAMS

WHEN

1. January, 1973 — Each local bilingual program shall organize a Parent Advisory Committee (PAC) according to the guidelines set forth by the Bureau of Transitional Bilingual Education.

2. The submission of plans for Transitional Bilingual Education programs for the 1973-1974 school year must comply with section forty-one (41) of the Regulations:

> After the 1972-1973 school year, no plan shall be approved under this Act which has not been submitted in advance to the chairman and each of the members of the Parents Advisory Committee.

HOW

1. The Superintendent is responsible for assigning an appropriate person (the director or the head teacher of the bilingual program) to develop the Parent Advisory Committee for the bilingual program of each linguistic group. Minimum membership will be *five* parents in each PAC. A single PAC will represent a maximum of three hundred (300) students.

2. Bilingual teachers through contacts with the parents can identify and recommend potential members.

3. Bilingual coordinators, teacher aides and related community agencies can disseminate information regarding the PAC concept.

4. Incentive for membership should be provided through social and educational activities relevant to the community involved. Assistance in fulfilling this responsibility may be sought from community-based organizations.

5. The possibility of providing a stipend to parents for attending PAC meetings should be explored through Model Cities, CAP agencies, Urban Leagues, etc.

6. A training program should be provided for the parents to prepare them to fulfill their duties as members of PAC.

7. The location for meetings should be decided by the membership so as to avoid any element that could be discomforting to persons of other cultures. Meetings could well be conducted in community centers, parish halls, social clubs, homes, etc.

WHY

1. The Bureau of Transitional Bilingual Education is charged by law to provide for the maximum practicable involvement of parents of children of limited English-speaking ability in the planning, development and evaluation of Transitional Bilingual Education programs in the districts serving their children.

2. The Regulations of the Law provide specific norms for Parent Participation in sections 38, 39, 40, 41 and 42. (Those regulations are reprinted here as an appendix).

3. The participation of parents in the individual Transitional Bilingual Education programs for their children is an inherent right of the linguistic communities involved.

WHO

1. Membership in each single linguistic PAC should consist of a minimum of five parents and the following general composition:
   - a. Any parent of children presently in the program.
   - b. Other community representatives recommended by the parents or approved by them.
   - c. A minimum of one student representative.

2. Membership in the Master PAC — in multilingual or extensive bilingual programs should include:
   - a. Parent representation from each linguistic minority or local PAC.
   - b. Representation from community, civic, educational, social and religious organizations who relate to the interests of the parents.
   - c. Student representation.

Note: The position of full-time Parent Advisory Committee Coordinator for multilingual and extensive bilingual programs may be included in the budget as a reimbursable item.

3. Other participants at meetings by invitation could include:
   - a. School administrators.
   - b. Teachers in the bilingual program or in the regular classes of the schools involved.
   - c. Community coordinators, teacher aides, student advisors, etc.
   - d. Any other members of the community whose expertise can contribute in a positive way to the success of the program.

Note: 1. Membership of non-parents is by recommendation and group concensus.
2. The chairman is elected from and by the membership.
3. Bi-monthly meetings shall be scheduled, although more frequent meetings may be called as needed.

WHAT

Responsibilities of the PAC shall include the following:

1. To become familiar with the bilingual program, its functions in the community and how it should be affecting their children in the home.

2. To serve as an advisory body to the school in all phases of the bilingual program.

3. To review, make recommendations and pass a final decision in writing, over a minimum timetable of thirty days, on the validity of the plan for the bilingual program to be submitted annually by the school committee through the superintendent to the Bureau of Bilingual Education as specified in the Regulations.

4. To participate in the interviewing process of candidates for all bilingual positions in the program. (Any PAC member employed in the program is automatically excluded from this function.)

5. To disseminate information on bilingual education throughout the community.

6. To identify newly-arrived families of the various linguistic groups and extend the services of the bilingual program to the children.

7. To organize interest groups that will stimulate parent participation in school activities.

8. To reinforce cultural awareness.

9. To serve as a pressure group for the total implementation of the bilingual law in the programs in the area or the linguistic group represented by each PAC.

10. To participate in an appeals process regarding controversial issues between the students in the bilingual program and the School System.

11. To contribute in any way possible to the improvement and the enrichment of the bilingual program designed by law to benefit their children.

APPENDIX

GUIDELINES FOR PAC INVOLVEMENT IN TRANSITIONAL BILINGUAL EDUCATION PROGRAM.

PARENT PARTICIPATION REGULATIONS

38. For the 1973-1974 school year and thereafter each school district operating a Transitional Bilingual Education program shall establish a Parent Advisory Committee (PAC) on Transitional Bilingual Education. The Parent Advisory Committee shall be comprised of parents of children of limited English-speaking ability enrolled in Transitional Bilingual Education programs. The Parent Advisory Committee shall have at least five (5) members including one or more representatives from every language group in which Transitional Bilingual Education is conducted in the district. Members of the Parent Advisory Committee shall be selected in a manner which fairly represents the view of parents of children in Transitional Bilingual Education programs.

39. The Parent Advisory Committee shall meet regularly with school officials and at least once annually with the school committee to participate in the planning, development and evaluation of the district's Transitional Bilingual Education program. Members of the PAC shall have access to Transitional Bilingual Education program records.

40. The Parent Advisory Committee may appoint subcommittees (sub-PACs) for different language groups and/or schools participating in the district's Transitional Bilingual Education program.

41. After the 1972-1973 school year, no plan shall be approved under this Act which has not been submitted in advance to the chairman and each member of the Parent Advisory Committee.

42. Parents of children of limited English-speaking ability enrolled in Transitional Bilingual Education programs who are members of Title I Parent Advisory Committees shall be eligible to participate on Parent Advisory Committees established under the Act and Regulations.

GENERAL REGULATIONS AND PROCEDURES REGARDING CENSUS OBLIGATIONS

A. The Act ______ 40

B. General Information ______ 40

C. Regulations ______ 40

D. Procedures and Deadlines for Collecting In-School Data ______ 41

E. Procedures and Deadlines for Collecting In-Home Count ______ 41

F. General Considerations for the In-Home Count ______ 42

G. Due Dates ______ 42

GENERAL REGULATIONS AND PROCEDURES REGARDING CENSUS OBLIGATIONS

A. *The Act*

Chapter 71A, The Transitional Bilingual Education Act, requires the following: "Each school committee shall ascertain, not later than the first day of March, under regulations prescribed by the department, the number of children of limited English-speaking ability within their school system, and shall classify them according to the language of which they possess a primary speaking ability."

The Act further specifies that, "When, at the beginning of any school year, there are within a city, town or school district not including children who are enrolled in existing private school systems, twenty or more children of limited English-speaking ability in any such language classification, the school committee shall establish, for each classification, a program in transitional bilingual education for the children therein provided, however, that a school committee may establish a program in Transitional Bilingual Education with respect to any classification with less than twenty children therein."

B. *General Information*

The fall statistical data which local school districts file with the Department includes data collected in satisfaction of the requirements of Chapter 72, Section 2.

In order to meet the requirements of these standards it is expected that school districts provide Bilingual Census data with the annual registration required under Chapter 72, Section 2.

Briefly, it requires that each school district count children of limited English-speaking ability in and out of school by conducting a census in the homes and in the schools.

C. *Regulations*

1. For the 1972-73 School Year, school districts participating in the Transitional Bilingual Education Program shall comply with the current school census law, Mass. G. L. Ch. 72, Sec. 2, and any regulations and/or guidelines promulgated by the Commissioner of Education respecting the census. (Regulation #2. Consult also the Commissioner of Education's Memorandum dated 1/21/72 *Census Obligations.)*

2. For the 1973-74 School Year and thereafter, each school committee shall conduct a census not later than March 1 of each year, of the number of children of limited English-speaking ability resident in the district. Such census shall count children resident in the district both in and out of school. In making such census the school committees shall seek the assistance and cooperation of churches, agencies, organizations or community groups, public or private, which have access to or information about children of limited English-speaking ability resident in the district. Every effort shall be made to keep the census current. (Regulation #3.

3. Each school district shall designate one regular employee principally responsible for the school district's census-taking activities under the Act. (Regulation #4.)

4. School or non-school personnel conducting the census shall be able to communicate in the home language of the children being counted. (Regulation #5.)

D. *Procedures and Deadlines for Collecting In-School Data*

1. Principal in each school building housing children of limited English speaking ability as defined shall record data on Form C-4a-74 and submit it to the local school central office for bilingual affairs.

Note that data for two classifications is required, namely:
(a) children whose first language is other than English,
(b) children who have been identified as limited English speaking and who need Transitional Bilingual Programming.

2. Each School Building principal should keep a listing of students of limited English-speaking ability needing Transitional Bilingual Education. Use Form C-3-74. This should be on file in the School Building office complete with the information asked for. (This information should be available to the staff of the Bureau of Transitional Bilingual Education on request).

3. The central office for bilingual affairs shall compile the individual school in-school Census Count and record the summary on Form C-4-74.

4. Copies of each individual school in-school Census Count Form C-4a-74 and the Summary Sheet C-4-74 should be submitted to the Bureau of Transitional Bilingual Education.

5. Cover Sheet Form C-1-74 should be signed by the duly authorized personnel.

6. It is expected that the in-school count be submitted to the Bureau of Transitional Bilingual Education on or before October 31 each year.

E. *Procedures and Deadlines for Collecting Data for the In-Home Count*

1. Personnel responsible for this activity shall record any recently registered child who has been identified as a result of an in-home count.

The Bureau of Transitional Bilingual Education requires a list of recently registered children be kept on file in each school building with the following data on each child.

a. Name of Child
b. Address
c. Place of Birth
d. Date of Birth, Age
e. School last attended
f. Date last attended school
g. First language other than English
h. Where has the child been placed? Standard curriculum or Transitional Bilingual Education?
i. Grade Placement
j. How did the child get to be registered?

k. How long has the child resided in this city or town?

2. The Department or office responsible for the conduct of the census should demonstrate specifically how (by what procedures) the census was conducted. It should also specify its capability to conduct the census in the home in a language other than English.
This information should accompany census data sent to the State Bureau of Transitional Bilingual Education.

3. Use Form C-4b-74 to summarize the in-home count,

4. Submit Form C-4b-74 with covering sheet (Form C-1-74) to the State Department of Education, Bureau of Transitional Bilingual Education, on or before March 1, each year.

F. *General Considerations for the In-Home Count*

1. Census taken shall count only those children residing in the area of the school district whose first language is other than English.

2. The only successful means of performing an adequate census of non-English-speaking children in a community is by personal interviews in the homes. In view of this fact, it is necessary to hire, on a temporary basis, during the time of the census, a native-speaking community worker who can meaningfully relate to the families in their native language and culture. This person will conduct such a census by interviewing the families concerned using the C-2-73 form prescribed by the Bureau of Transitional Bilingual Education.

3. Seek the assistance and cooperation of religious organizations, community-based social agencies and other community groups, public or private. They may have information about children of limited English-speaking ability resident in the district.

4. Regularly seek out information from the children in the bilingual classes throughout the system concerning their knowledge of non-English-speaking families (relatives, friends, neighbors, etc.) who may be arriving in the area. Teacher aides and community coordinators may well serve as contact people in this outsearch effort.

5. Use news media to inform parents of children of limited English-speaking ability about the following:

1) The existence of a Transitional Bilingual Education Program in Public Schools of the community.
2) The State requirement to conduct a local census in the homes of children of limited English-speaking ability.
3) The local obligation to place children in a program of Transitional Bilingual Education.
4) The parental prerogative to keep children in the program.
5) The local contact person to whom parents may address their questions.

G. *Due Dates:*

In-School Count October 31 In-Home Count March 1

B. Texas Bilingual Education Law, Vernon's Texas Code Ann. Sections 21.451-460, 11.17, 12.04, 21.09

EDUCATION CODE—BILINGUAL EDUCATION AND TRAINING

CHAPTER 392

S. B. No. 121

An Act relating to bilingual education programs in the public schools and to bilingual training institutes for training public school personnel; providing for funding; amending Texas Education Code as follows: amending Chapter 21 by amending Section 21.109 and adding a new Subchapter L; adding a new Section 11.17 to Subchapter A, Chapter 11; adding a new Subsection 12.05 to Subchapter A, Chapter 12; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 21, Texas Education Code, is amended by adding [11] Subchapter L to read as follows:

"SUBCHAPTER L. BILINGUAL EDUCATION

"Sec. 21.451. State Policy

"The legislature finds that there are large numbers of children in the state who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The legislature believes that a compensatory program of bilingual education can meet the needs of these children and facilitate their integration into the regular school curriculum. Therefore, pursuant to the policy of the state to insure equal educational opportunity to every child, and in recognition of the educational needs of children of limited English-speaking ability, it is the purpose of this subchapter to provide for the establishment of bilingual education programs in the public schools and to provide supplemental financial assistance to help local school districts meet the extra costs of the programs.

"Sec. 21.452. Definitions

"In this subchapter the following words have the indicated meanings:

"(1) 'Agency' means the Central Education Agency.

"(2) 'Board' means the governing board of a school district.

"(3) 'Children of limited English-speaking ability' means children whose native tongue is a language other than English and who have difficulty performing ordinary classwork in English.

"Sec. 21.453. Establishment of Bilingual Programs

"(a) The governing board of each school district shall determine not later than the first day of March, under regulations prescribed by the State Board of Education, the number of school-age children of limited English-speaking ability within the district and shall classify them according to the language in which they possess a primary speaking ability.

"(b) Beginning with the 1974-75 scholastic year, each school district which has an enrollment of 20 or more children of limited English-speaking ability in any language classification in the same grade level during the preceding scholastic year, and which does not have a program of bilingual instruction which accomplishes the state policy set out in Section 21.451 of this Act, shall institute a program of bilingual instruction for the children in each language classification commencing in the first grade, and shall increase the program by one grade each year until bilingual instruction is offered in each grade up to the sixth. The board may establish a program with respect to a language classification with less than 20 children.

"Sec. 21.454. Program Content; Method of Instruction

"(a) The bilingual education program established by a school district shall be a full-time program of instruction (1) in all subjects required by law or by the school district, which shall be given in the native language of the children of limited English-speaking ability who are enrolled in the program, and in the English language; (2) in the comprehension, speaking, reading, and writing of the native language of the children of limited English-speaking ability who are enrolled in the program, and in the comprehension, speaking, reading, and writing of the English language; and (3) in the history and culture associated with the native language of the children of limited English-speaking ability who are enrolled in the program, and in the history and culture of the United States.

"(b) In predominantly nonverbal subjects, such as art, music, and physical education, children of limited English-speaking ability shall participate fully with their English-speaking contemporaries in regular classes provided in the subjects.

"(c) Elective courses included in the curriculum may be taught in a language other than English.

"(d) Each school district shall insure to children enrolled in the program a meaningful opportunity to participate fully with other children in all extracurricular activities.

"Sec. 21.455. Enrollment of Children in Program

"(a) Every school-age child of limited English-speaking ability residing within a school district required to provide a bilingual program for his classification shall be enrolled in the program for a period of three years or until he achieves a level of English language proficiency which will enable him to perform successfully in classes in which instruction is given only in English, whichever first occurs.

"(b) A child of limited English-speaking ability enrolled in a program of bilingual education may continue in that program for a period longer than three years with the approval of the school district and the child's parents or legal guardian.

"(c) No school district may transfer a child of limited English-speaking ability out of a program in bilingual education prior to his third year of enrollment in the program unless the parents of the child approve the transfer in writing, and unless the child has received a score on an examination which, in the determination of the agency, reflects a level of English language skills appropriate to his or her grade level. If later evidence suggests that a child who has been transferred is still handicapped by an inadequate command of English, he may be re-enrolled in the program for a length of time equal to that which remained at the time he was transferred.

"(d) No later than 10 days after the enrollment of a child in a program in bilingual education the school district shall notify the parents or legal guardian of the child that the child has been enrolled in the program. The notice shall be in writing in English, and in the language of which the child of the parents possesses a primary speaking ability.

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[11] V.T.C.A. Education Code, §§ 21.451 to 21.460.

"**Sec. 21.456. Facilities; Classes**

"(a) Programs in bilingual education, whenever possible, shall be located in the regular public schools of the district rather than in separate facilities.

"(b) Children enrolled in the program, whenever possible, shall be placed in classes with other children of approximately the same age and level of educational attainment. If children of different age groups or educational levels are combined, the school district shall insure that the instruction given each child is appropriate to his or her level of educational attainment, and the district shall keep adequate records of the educational level and progress of each child enrolled in the program.

"(c) The maximum student-teacher ratio shall be set by the agency and shall reflect the special educational needs of children enrolled in programs of bilingual education.

"**Sec. 21.457. Cooperation Among Districts**

"(a) A school district may join with any other district or districts to provide the programs in bilingual education required or permitted by this subchapter. The availability of the programs shall be publicized throughout the affected districts.

"(b) A school district may allow a nonresident child of limited English-speaking ability to enroll in or attend its program in bilingual education, and the tuition for the child shall be paid by the district in which the child resides.

"**Sec. 21.458. Preschool and Summer School Programs**

"A school district may establish on a full- or part-time basis preschool or summer school programs in bilingual education for children of limited English-speaking ability and may join with other districts in establishing the programs. The preschool or summer programs shall not be a substitute for programs required to be provided during the regular school year.

"**Sec. 21.459. Bilingual Education Teachers**

"(a) The State Board of Education shall promulgate rules and regulations governing the issuance of teaching certificates with bilingual education endorsements to teachers who possess a speaking and reading ability in a language other than English in which bilingual education programs are offered and who meet the general requirements set out in Chapter 13 of this code.

"(b) The minimum monthly base pay and increments for teaching experience for a bilingual education teacher are the same as for a classroom teacher with an equivalent degree under the Texas State Public Education Compensation Plan. The minimum annual salary for a bilingual education teacher is the monthly base salary, plus increments, multiplied by 10, 11, or 12, as applicable.

"**Sec. 21.460. Allotments for Operational Expenses and Transportation**

"(a) To each school district operating an approved bilingual education program there shall be allotted a special allowance in an amount to be determined by the agency for pupil evaluation, books, instructional media, and other supplies required for quality instruction.

"(b) The cost of transporting bilingual education students from one campus to another within a district or from a sending district to an area vocational school or to an approved post-secondary institution under a contract for instruction approved by the Central Education Agency shall be reimbursed based on the number or actual miles traveled times the district's official extracurricular travel per mile rate as set by their local board of trustees and approved by the Central Education Agency.

"(c) The Foundation School Fund Budget Committee shall consider all amounts required for the operation of bilingual education programs in estimating the funds needed for purposes of the Foundation School Program.

"(d) The cost of funding this Act shall, for fiscal years 1974 and 1975, be maintained at the level contained in House Bill 139, 63rd Legislature, Regular Session, 1973."

Sec. 2. Subchapter A, Chapter 11, Texas Education Code, is amended by adding [12] Section 11.17 to read as follows:

"**Sec. 11.17. Bilingual Education Training Institutes**

"(a) The Central Education Agency shall conduct bilingual education training institutes.

"(b) The agency shall make rules and regulations governing the conduct of and participation in the institutes.

"(c) Professional and paraprofessional public school personnel who participate in the bilingual education training institutes shall be reimbursed for expenses incurred as a result of their participation in accordance with rules and regulations adopted by the agency."

Sec. 3. Subchapter A, Chapter 12, Texas Education Code, is amended by adding [13] Section 12.04 to read as follows:

"**Sec. 12.04. Bilingual Education Textbooks**

"(a) The State Board of Education shall acquire, purchase, and contract for, with bids, subject to rules and regulations adopted by the board, free textbooks and supporting media for use in bilingual education programs conducted in the public school systems of this state.

"(b) The textbooks and supporting media shall be paid for out of the textbook fund and shall be the property of the State of Texas, to be controlled, distributed, and disposed of pursuant to board regulations."

Sec. 4. Section 21.109, Texas Education Code, is amended [14] to read as follows:

"**Sec. 21.109. Language of Instruction**

"(a) English shall be the basic language of instruction in all schools.

"(b) It is the policy of this state to insure the mastery of English by all pupils in the schools; provided that bilingual instruction may be offered or permitted in those situations when such instruction is necessary to insure their reasonable efficiency in the English language so as not to be educationally disadvantaged."

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the senate on April 30, 1973, by a viva-voce vote; May 23, 1973, senate concurred in house amendments by a viva-voce vote; passed the house, with amendments, on May 23, 1973: Yeas 112, Nays 21, two present not voting.

Approved June 13, 1973.

Effective Aug. 27, 1973, 90 days after date of adjournment.

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[12] V.T.C.A. Education Code, § 11.17.

[13] V.T.C.A. Education Code, § 12.04.

[14] V.T.C.A. Education Code, § 21.109.

C. Legislation and Expenditures by States on Bilingual/Bicultural Education Programs, for years 1973-74 and 1974-75. By Joe J. Bernal and William Kean, *IDRA Newsletter*, September, 1975 (p. 2)

Changes in Bilingual Education

The Bilingual Education Act, Title VII of the Elementary and Secondary Act, has brought about a significant consciousness of the need for bilingual education in the seven years since its enactment in 1968. Thirty states and three jurisdictions have passed legislation since 1967 which expressly permits or mandates the use of languages other than English as media for instruction in the classroom. Most recently, the state of Colorado passed a law in June, 1975, mandating bilingual education in every school in which 50 students or more than 10 per cent are "linguistically different". Significantly, Colorado budgeted $2.55 million for the program.

IDRA's Bilingual Cost Analysis Project is engaged in research which, in part, calls for computing costs on a weighted pupil basis and making comparisons between states. The chart included provides basic data on legislative and programmatic bilingual education activity by states and jurisdictions as well as information on federal Title VII projects.

Between 1973-74 and 1974-75, the number of Title VII projects increased by 171 (from 209 to 380), while the number of states and other jurisdictions having projects increased from 30 to 41. As of April 1975, 11 states still prohibited the use of any language other than English in public schools instruction, although it is legally possible to have bilingual education in all states and jurisdictions because of the **Lau** decision.

Data for the chart has been obtained from the following sources:

1. The section on legislative activity was taken from a May, 1975 report, "Current Legislation in Bilingual Education", by the ERIC Clearing-house on Languages and Linguistics, Arlington, Virginia.

2. The information on state funding and number of projects for 1973-74 was taken from a article by Lawrence Wright appearing in the September, 1973 issue of the Race Relations Reporter.

3. Other information come from the Division of Bilingual Education, Office of Education, in reports dated August 16, 1973 and January 8, 1975.

Bilingual/Bicultural Education Programs 1973-1974 And 1974-75

	STATES LEGISLATIVE ACTIVITY						FEDERAL TITLE VII, ESEA		
	STATUTES					PROGRAMS	PROJECTS		
	Prohibitory		No Provision	Permissive	Mandatory	Expenditures	Numbers		Expenditures
STATES	P NP	P				1973-'74	73-74	74-75	1974-'75
ALABAMA	X								
ALASKA					X	$ 200,000	1	4	$ 872,656
ARIZONA				X			9	16	2,295,808
ARKANSAS	X								
CALIFORNIA				X		4,000,000	61	111	16,741,476
COLORADO				X			7	10	1,464,850
CONNECTICUT				X			3	7	1,3[illegible],385
DELAWARE		X						1	151,781
FLORIDA				X			3	5	1,482,424
GEORGIA			X						
HAWAII			X						314,197
IDAHO		X					1	3	360,437
ILLINOIS				X	X	2,300,000	4	3	2,482,053
INDIANA			X				2	2	377,617
IOWA	X								
KANSAS				X				1	137,066
KENTUCKY			X						
LOUSIANA				X			4	8	1,518,525
MAINE				X			3	3	370,735
MARYLAND				X					
MASSACHUSETTES				X	X	4,000,000	7	7	1,302,960
MICHIGAN				X	X	88,000	4	6	1,119,604
MINNESOTA				X				1	205,780
MISSISSIPPI			X					1	289,094
MISSOURI			X					1	250,000
MONTANA	X							4	575,821
NEBRASKA	X							1	45,423
NEVADA			X						
NEW HAMPSHIRE				X			1	1	179,823
NEW JERSEY				X	X		4	10	2,442,652
NEW MEXICO				X		694,140	12	18	2,049,493
NEW YORK				X		1,500,000	26	51	11,989,723
NORTH CAROLINA	X								
NORTH DAKOTA			X						
OHIO			X				1	3	553,001
OKLAHOMA		X					3	3	486,000
OREGON				X			1	3	402,725
PENNSYLVANIA					X		2	6	1,362,342
RHODE ISLAND				X	X		2	5	757,046
SOUTH CAROLINA			X						
SOUTH DAKOTA				X			1	3	198,200
TENNESSEE			X						
TEXAS				X	X	700,000	40	60	10,029,609
UTAH				X			1	2	400,300
VERMONT			X					2	91,100
VIRGINIA			X						
WASHINGTON				X		500,000	2	3	635,400
WEST VIRGINIA	X								
WISCONSIN		X					1	2	272,261
WYOMING			X						116,206
JURISDICTION									
GUAM				X			1	1	201,373
PANAMA CANAL ZONE			X						
PUERTO RICO					X		1	1	406,100
AMERICAN SAMOA				X				1	332,037
TRUST TERRITORIES			X					7	289,798
VIRGINA ISLANDS				X			1	2	204,300
WASHINGTON D.C.			X			175,000		1	129,500

P/NP - - - Refers to both public and non - public schools P - - - Refers to public schools only

D. List of State Laws on Bilingual Education

Alabama

No legislation.

Alaska

Alaska Statutes §§14.08.160 and 14.08.170 (1972)

Each state-operated school with 15 or more students whose dominant language is other than English must provide bilingual instruction. Schools apply directly to the legislature for funds.

Arizona

Arizona Revised Statutes, §15-1099 (1974)

HP 2208 allows districts to provide bilingual education to children K-8 who have difficulty writing, speaking or understanding English. Funding provided K-4.

For further information:

Henry Arredondo
Coordinator for Bilingual Education
State Department of Education
Phoenix, Arizona
(602) 271-3205

Arkansas

No legislation.

California

California Education Code §§5761-5764.6 (West, 1972) and §§5768-5769.6 (West, 1973)

For further information:

Gilbert Martinez
Director, Bilingual Education
State Department of Education
721 Capitol Mall
Sacramento, California
(916) 445-2872

Colorado

Colorado Revised Statutes Annotated, §123-21-3 (Supp. 1969)

The state legislature passed an enabling act allowing instruction in languages other than English.

For further information:
Bernie Martinez
Consultant, Community Services
State Office Building
Denver, Colorado
(303) 892-2234

Connecticut

Connecticut General Statutes Annotated, Ch. 10, §§17a and 17b (1971) and §146(f) (amended 1974)

For further information:
Kenneth Lester
Consultant, ESOL and Bilingual
State Department of Education
Hartford, Connecticut
(203) 566-4424

Delaware

Delaware Code Annotated, Ch. 14, §122B(5)

A state law remains on the books (c. 1920) that requires all classes to be taught in English. This law is not enforced and teachers may teach in another language if they wish.

For further information:
Robert Zaetta
Coordinator of Bilingual Education
Department of Public Instruction
Dover, Delaware
(302) 678-4628

Florida

West's Florida Statutes Annotated, §236.081(2) (1973)

Many students receive bilingual/bicultural instruction through local programs, such as in the Dade County schools.

Georgia

No legislation.

Hawaii

No legislation.

Idaho

Idaho Code, Ch. 33, §803 (1963)

State law provides that a local district may pass a levy to provide migrant/bilingual programs, if they so desire.

Illinois

Illinois Ann. Statutes, Ch. 122, §§2-3.39, 10-22.38(a), 14B-6-14B-8, 14C, and 34-18.2(1973)

HB 1223 has made bilingual education mandatory by July 1, 1976, for any school with 20 or more limited English speaking children of the same language.

For further information:
H. Ned Seelye, Director
Bilingual Education
188 W. Randolph Street
Chicago, Illinois
(312) 793-3850

Indiana

No legislation.

Iowa

No legislation.

Kansas

Kansas Statutes Annotated, Ch. 72, §1101

The state legislature has amended the state law to allow for bilingual instruction at the elementary level, with the approval of the State Board of Education.

For further information:
Vincente Serrano
Coordinator of Migrant Program
State Department of Education
120 East Tenth Street
Topeka, Kansas

Kentucky

No legislation.

Louisiana

Senate Bill No. 639, Amending Title 17 of the Louisiana Revised Statutes, R.S. 17:273 (1975)

Any parish or city school system may institute teaching of second language as part of the curriculum commencing with 1976-77 school year. If 25% of the heads of households of students attending school petition for teaching of second language, the program must be instituted.

For further information:
Homer Dyess, Coordinator
Foreign Languages and Bilingual
State Department of Education
P.O. Box 44064
Baton Rouge, Louisiana
(504) 389-6486

Maine

Maine Revised Statutes Annotated, Ch. 20, §102(116)(1971)

Schools may provide up to five years of bilingual education.

Maryland

No legislation.

For further information:
Ann Beusch, Specialist
Foreign Languages and Bilingual
State Department of Education
P.O. Box 8717
Balt-Wash International Airport
Baltimore, Maryland

Massachusetts

Mass. Gen. Laws, Ch. 71A (1972)

Districts with 20 or more students in one language classification must provide a bilingual education program.

For further information:
Ernest Mazzone, Director
Transitional Bilingual Education
State Department of Education
Boston, Massachusetts

Michigan

Michigan Comp. Laws Annotated, §340.811 (1955)

State law mandates that schools having more than 20 in the same language classification must be provided bilingual instruction K-12, with local funds. State grants are made available for pilot training programs only.

For further information:
Robert Trezise, Coordinator
Communication Skills
State Department of Education
P.O. Box 420
Lansing, Michigan
(517) 373-1484

Minnesota

No legislation.

Mississippi

No legislation.

Missouri

No legislation.

Montana

Revised Code of Montana, Ch. 82, §§2701, 2702 (Amended, 1974)

For further information: Dean Lindahl, Supervisor
ESEA, Title I
State Department of Education
Helena, Montana

Nebraska

State law mandates English only (not enforced)

Nevada

Nevada Constitution, Art. 11, §1 (1956)

State constitution was amended to allow instruction in languages other than English.

New Hampshire

New Hampshire Revised Statutes Annotated, Ch. 189, §19 (1969)

Bilingual and bicultural programs may be sanctioned by the State Board of Education.

New Jersey

New Jersey Statutes Annotated, Ch. 18A, §§35-15--35-26 (1975)

The governor signed a new bilingual education law in January, 1975. Districts with more than 20 students in the same language classification must provide instruction in both languages. Programs will start September, 1975.

For further information: Diego Castellanos, Acting Director
Bilingual Education
State Department of Education
225 West State Street
Trenton, New Jersey
(609) 292-8616

New Mexico

New Mexico Statutes Annotated, Ch. 77, §§23-1--23-7 (1973)

Legislation provides bilingual education for students with language problems, especially in the lower grades.

For further information: Jose Griego
Special Consultant, Bilingual Education
State Department of Education
Santa Fe, New Mexico
(505) 827-5391

New York

New York Education Law §3204 (McKinney, 1972)

Recent legislation has extended the use of bilingual instruction to all grade levels. Maximum of six years of bilingual education.

For further information:
Marja Romirez
Director, Bilingual Education
State Department of Education
Albany, New York

North Carolina

No legislation.

North Dakota

No legislation.

Ohio

No legislation.

Oklahoma

No legislation.

Oregon

Oregon Revised Statutes, §343.650 (1967)

Instruction may be conducted in more than one language in order that pupils whose native language is other than English can develop bilingual skills to make an early and effective transition to English and benefit from increased educational opportunities.

For further information:
Gilbert Anzaldua
Director, Compensatory Education
State Department of Education
942 Lancaster Drive, NE
Salem, Oregon

Pennsylvania

School Administrators' Memorandum 491, March 10, 1972

The Secretary of Education has mandated that all districts with students having dominant languages other than English, must provide either bilingual education or English as a Second Language programs.

For further information:
Fannetta Gordon
Senior Advisor for Foreign Languages
Department of Curriculum
State Department of Education
Harrisburg, Pennsylvania
(717) 787-8913

Rhode Island

No legislation.

South Carolina

No legislation.

South Dakota — No legislation.

Tennessee — No legislation.

Texas — Vernon's Texas Code Annotated, §§21.451-21.460, §11.17, §12.04, §21.09 (1973)

Legislation mandates bilingual education in any school having 20 or more students in the same language classification.

For further information:
Dr. Severo Comez
Associate Commissioner of Education
Texas Education Agency
201 East 11th Street
Austin, Texas

Utah — Utah Laws 55, Ch. 53, §§7-18(d)(3) (1974)

Bilingual education is a recent development and is optional to the districts.

For further information:
Elliott Howe
Coordinator, Title I, ESEA
136 East South Temple
Salt Lake City, Utah
(801) 328-5061

Vermont — No legislation.

Virginia — No legislation.

Washington — Revised Code of Washington Annotated, Ch. 28A, §§41.250, 41.260, 41.270, 41.280, 41.290 (1974)

There is no state legislation providing bilingual/bicultural programs. These programs are a high priority category of the state's compensatory education program; Urban, Rural, Racial, Disadvantaged Educational Program (URRD).

For further information:
Walt Barbee
Supervisor, URRD Programs
Old Capitol Building
Olympia, Washington

West Virginia — No legislation.

Wisconsin — No legislation.

Wyoming — No legislation.

VIII Types of Programs and Other Issues

Materials in this section are the bilingual-bicultural educational goals and plans of Crystal City and El Paso, Texas; a series of New York City program models cited by the *Aspira* plaintiffs; and an article dealing with teacher training issues based on experience in Providence, Rhode Island.

A. Description of the Bilingual-Bicultural Education Program in the Crystal City Independent School District (Texas)

CRYSTAL CITY INDEPENDENT SCHOOL DISTRICT

PRIMARY GOAL

The primary goal of Bilingual-Bicultural Education within the Crystal City Independent School District (CCISD), is successful achievement of the goals of the educational process, using two languages (Spanish-English), developing proficiency in both before graduation.

Complementary Goals

In order to progress toward our primary goal, the following complementary goals must be accomplished:

1. Educational success on the part of the mono-lingual student, through permitting him to learn to speak, to read, to write, and to think in his vernacular (mother tongue) with limited exposure to listening and oral skills in a second language (English).

2. Continued development by the mono-lingual student of his own language as he is learning to function successfully in the second language.

3. Continued development by the bilingual student in his dominant language for instruction while strengthening his second language through listening and oral activities.

4. Increased recognition by the total community (parents, teachers, administrators, students) of the importance of bilingualism, both the process and the product.

The above goals refer to the end products to be sought in terms of the development of students.

In order to reach the complementary goals, the Crystal City Independent School District must:

1. Provide an environment which is conducive to learning.

   a. Staff
   b. Facilities
   c. Materials

PRIORITIES

The Crystal City Independent School District (CCISD) recognizes the need for the development and implementation of a program which will assist each student in becoming proficient in both Spanish and English.

It is also felt that a long drawn out process cannot be adopted, therefore, we have present our priorities as one priority.

1. The Crystal City Independent School District will provide a Bilingual-Bicultural program for all students who are enrolled so that success may be attained in learning curriculum content in whichever language they may understand best.

. . . Components in Spanish and English language development must be included beginning the Pre-Kindergarten and continuing through the twelfth grade.

. . . A component must be included which deals directly with the student's culture and heritage beginning with Pre-Kindergarten and continuing through the twelfth grade.

BILINGUAL-BICULTURAL EDUCATION

in

CRYSTAL CITY INDEPENDENT SCHOOL DISTRICT

Bilingual-Bicultural Education is perceived as a program which has been developed in order to meet the individual needs of all the students, and should be characterized by the following components:

1. The basic concepts initiating the child into the school environment will be taught in the dominant language of the child.
2. Develop an effective program that will give each student an opportunity to progress toward the stated goals.
3. Appraise the student's level of development of language, concepts, and experiences (avoiding testing in the student's second language until he has sufficient control of the language so that his true verbal abilities can be measured).
4. Provide sufficient numbers of trained personnel to conduct the program.

I. The basic concepts initiating the child into the school environment will be taught in the dominant language of the child.

All orientation to the classroom behavior and his patterns of social interaction with his peers will be developed by drawing from the child's experiences, concepts, and language which he brings from home.

II. Language development will be provided in the child's dominant language.

The sequential development of the four language skills -- listening, speaking, reading, and writing -- will be continued in the language for which the child has already learned the sound system, structure, and vocabulary. This enables the child to develop skills before having to learn a second language.

III. Language development will be provided in the child's second language.

Teaching the listening and speaking skills by the use of the audio-lingual instructional technique prior to teaching the reading and writing skills, enabling every child to learn a second language. Unique in this component is that fact that a child does not have to re-learn language skills. He will merely have to transfer those skills which he learned in his first language.

IV. Subject matter and concepts will be taught in the child's dominant language.

Content areas which are critical to the intellectual and emotional development of the child and which effect his success in the school setting, will be taught, initially, through the use of the child's first language, thereby permitting and encouraging the child to enter immediately into classroom activities, enabling him to meet with early successes. This will insure the development of a positive self image.

V. Subject matter and concepts will be taught in the second language of the child.

Content areas will be taught in the child's second language, but not until after he has become literate in his own language. The teaching techniques are audio-lingual in order to insure the development of listening and speaking skills. As the child's second language ability develops more content and other skills, reading and writing will be incorporated.

VI. Special attention will be given to develop in every child a positive identity with his cultural heritage, self assurance, and confidence.

The historical contributions and cultural characteristics identified with the Mexican American will become an integral part of the total program (Pre-K to 12). This will enable all students to understand and appreciate, in a positive sense, historical contributions and the rich culture of the Mexican and the Mexican American.

By providing the opportunities for successful participation and achievement, the child will be encouraged to develop a strong self image and acceptance of other through social interaction.

VII. Reading in the second language will be delayed until the child has learned to read in the first. The child should be able to read with ease anything placed before him. This will show us that he has internalized all the rules for decoding his language. In the case of Spanish we are dealing with phonetically transcribed language, so we expect the child to read easily, smoothly, with no hesitations or halts, and to decode any but highly complex new words.

READING in BILINGUAL-BICULTURAL EDUCATION

in the

CRYSTAL CITY INDEPENDENT SCHOOL DISTRICT

I. Research has strengthened the position that children must be taught to read in their mother tongue. (MacNamara 1967, Modiano 1968, Orata 1953, Pryor 1968, Richardson, 1968)

II. Bilingual children will be taught to read in their dominant language (stronger language). Only those children whose mastery of both languages is so strong that they can fully comprehend the beginning reading materials can receive instruction in either language, or both.

III. In either case reading will be introduced in only one language. Reading in the second language will be delayed until the child becomes fully literate in his first language. We will not confuse the problems of learning a new language.

IV. Since English is so unphonetic, differences in transcription will only serve to confuse the children. A child must learn one method of transcription, and learn to decode it well, before he begins to untangle another.

V. The process of reading, regardless of the system of transcription, is universal (Gray 1956) and our first interest in any Bilingual program is that the child learn to read. When we confuse the learning of a second language with the learning of reading we only succeed in confusing the child, to the end that we retard his learning to read in either language (Modiano 1968) and often discourage him from academic achievement in any area.

VI. The appropriate time for introducing reading in the second language will depend on several factors.

  a. The method of transcription of the language which the child has already learned to read.
  b. The availability of trained staff.
  c. The availability of more advance printed materials in the first language.
  d. Pressures from the community.

VII. Because of the vast transcription differences between Spanish and English, a child is faced with learning a whole new set of decoding skills for English.

VIII. The better a child can read in his first language, the less trouble he will have learning to read in his second language, and the less he will confuse the decoding rules for the two languages.

IX. No recommendation as to grade placement will be given at this point since it will vary with each child, with each language, with each class and each school. This will be determined for each child individually.

X. Oral English will be stressed in order to familiarize the students with the sounds of an unknown tongue following the basic order, the development of the listening skills before introducing the child to the development of oral skills.

XI. Children will not be introduced to reading in English before they have learned to read well in their mother tongue; to do so would only mean they they would be almost as confused as if they were taught to read in English from the start.

Implicit in all the foregoing is the need for adequate materials for reading in the mother tongue and a well-trained, dedicated staff.

B. Educational Philosophy of the El Paso Independent School District

Educational Philosophy
of the
El Paso Independent School District

The El Paso Independent School District, as a creation of the State of Texas and of the El Paso community, views its role as an extension and enhancement of the home of each child it serves. In this role, we, the Board of Education and the professional and ancillary personnel, commit ourselves to providing an environment that promotes and ensures the personal dignity of each child and encourages him to develop his physical, emotional and mental abilities to their fullest potential. To carry out this role, we recognize the incompatabilities that exist in this district and are dedicated to the specific philosophies as enumerated in this document. In the realization of this philosophy we also recognize a commitment to fiscal and organizational efficiency and accountability.

I. POVERTY

We recognize that varying degrees of poverty exist within the district, which must, through the total educational program, be considered in the implementation of a comprehensive child development program.

II. CULTURE

We recognize that culture is the totality of group learned behavior and we value many varieties of human behavior. The schools will reflect our multicultural society in the school's environment.

III. LANGUAGE

We recognize the need for bilingual education in our schools, especially the need to begin instruction in the language native to the child and to help him develop maximum facility in the other dominant language of our bilingual city as early as possible, while continuing the development of his native language.

IV. MOBILITY

We recognize that due to mobility patterns the district must provide process-oriented alternatives through flexibility in programming.

V. SOCIETAL PERCEPTIONS

We recognize that societal perceptions based on cultural and socio-economic differences affect a child's education. The schools will make every effort to (1) develop a positive self-concept in every child; (2) develop in all persons the ability to value differences in others; and (3) develop positive concepts of self in all persons in the child's total environment.

VI. SCOPE AND SEQUENCE

We recognize that the scope and sequence of the prescribed curriculum must be so designed as to allow each child entry into and flexibility within the curriculum.

VII. POLICIES AND GOVERNANCES

We recognize that policies and governances should be established centrally and on individual campuses in such a manner that: (1) they are reflective of the needs and desires of the majority of the community and respect the rights of all minorities; (2) they will be conveyed to the community through effective bilingual dissemination channels; (3) they will establish clear channels of communication authority and responsibility within the district's organization; and (4) they will be minimal.

VIII. CURRICULUM

We recognize it is the responsibility of the district to: (1) provide for continuous local development of new educational programs and curriculum materials consistent with the goals of this statement of philosophy; and (2) provide continuous coordinated staff training programs in methodologies essential to the implementation of these goals.

IX. PUPIL APPRAISAL

We recognize that a comprehensive pupil appraisal system, based on specific objectives, must measure: (1) instructional and non-instructional needs; (2) success in meeting instructional needs consistent with the child's way of learning; and (3) success in meeting non-instructional needs.

X. SPECIAL EDUCATION

We recognize the need for a comprehensive and flexible special education program designed to meet the needs of each exceptional child with safeguards to insure the appropriate placement of students.

XI. CO-CURRICULAR

We recognize that co-curricular activities are essential in the educational development of each child and that continuous review must be provided to ensure that each child has equal access to all activities.

XII. PLANNING AND EVALUATION

We recognize that appropriate development and implementation of comprehensive programs for children require a central planning effort relating all organizational components of the district and that evaluation is an integral part of this process.

XII. STAFF DEVELOPMENT

We recognize that staff development for all levels and categories of personnel is the responsibility of the district in order to provide high quality services for children, accessability to the curriculum for all and responsiveness to change.

XIV. NON-INSTRUCTIONAL NEEDS

We recognize the need for close coordination in the working relationships between instructional and non-instructional personnel in order to provide a comprehensive support program for child development.

XV. PARENT-COMMUNITY INVOLVEMENT

We recognize the need for direct involvement of parents in an educational supportive role in each individual school in order that parents assume an active role as members of the educational team and a need for community involvement in an area and/or system-wide supportive manner.

XVI. PUBLIC RELATIONS

We recognize the need for direct and open bilingual communication of intent and purpose with the community through all available media.

XVII. GOALS AND PRIORITIES

We recognize the importance of setting realistic goals and priorities that are reflective of the philosophy of the district.

Decentralization Plan

A new decentralization plan designed to bring the El Paso schools closer to the people they serve was adopted by the Board of Education on July 19, 1972. The new plan was put into effect immediately.

The school district's sixty-two schools have been divided into three geographic areas, each with an assistant superintendent serving as area superintendent. Each area will have a citizens advisory committee to work with administrators in an advisory capacity.

The area citizens advisory committee will be composed of a member elected by each school's PTA or similar organization and three at-large parent members selected by organizations in the community that are representative of the ethnic socio-economic populace in the area. If there are more community organizations than at-large places on the committee, then a procedure will be established to provide each organization with the opportunity for representation. All eligible organizations would not necessarily be represented in any given school year.

The function of the council will be to advise the area superintendent on a broad range of subjects including curriculum needs and student policies, to provide the superintendent with information on the needs of the community related to school services and bring community problems to his attention.

This committee will meet on a monthly basis with the area superintendent. The school board will meet at least annually with each area committee.

The three areas are West, Central, and Northeast. The West area includes Coronado, Bowie, and El Paso high schools. The central area includes Austin, Jefferson, and Burgess high schools. The Northeast area will be comprised of Irvin and Andress high schools. Elementary and intermediate campuses are usually in the same area as the high school campus they feed, although a few deviations have been made in order to balance the size of the areas.

The twenty-one elementary and secondary consultants presently serving on a system-wide basis have been divided into three groups and assigned to a specific area. The major role of these consultants has been redefined to become that of staff development.

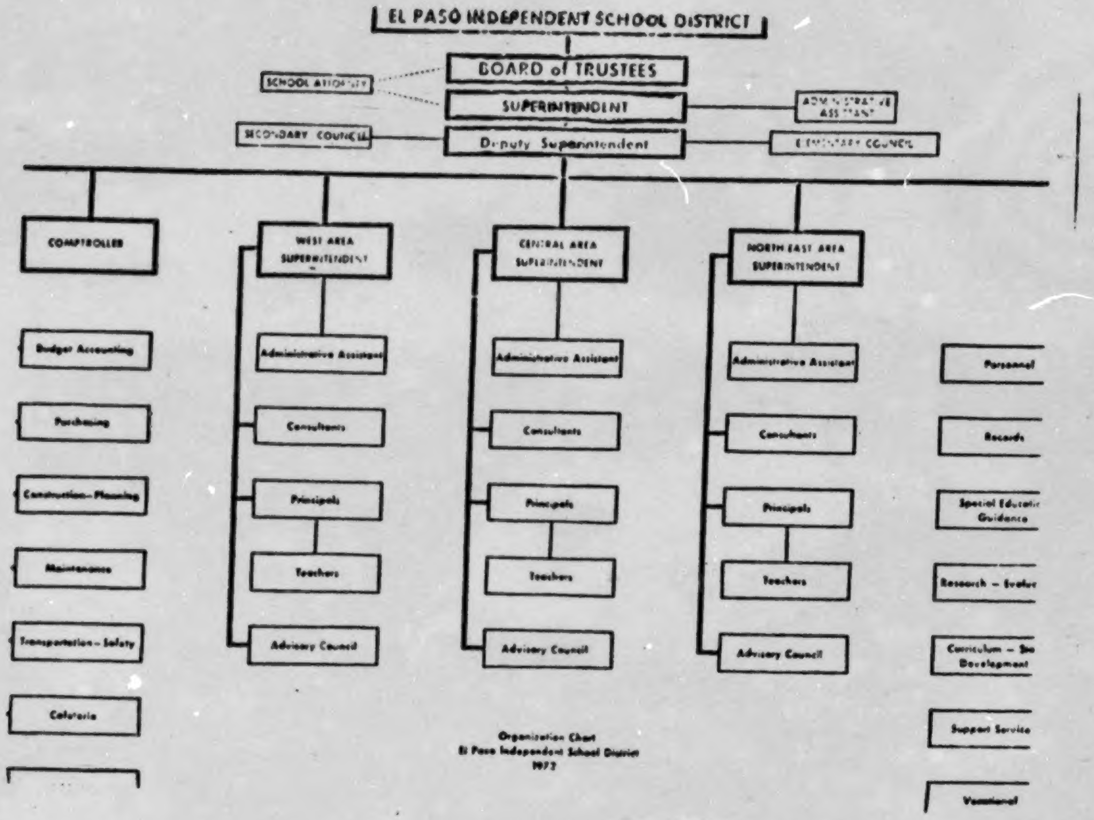
Many special education personnel who have been stationed centrally in the past will be assigned to the area organization. They will work to integrate special education and regular education to establish better relationships between the special education and the home.

A new department of staff and curriculum development has been organized at the district level. This department will work directly with the area superintendents to help them develop new curricula and new staff training programs addressed to the priorities suggested by the HEW technical assistance team.

The area superintendent will be responsible for recommending the selection, assignment, transfer, and promotion of all instructional, and administrative personnel in his area. This will enable him to better meet community and school needs.

The LEA budget for special instructional materials and services has been decentralized to allow each area superintendent freedom to meet the needs of the children in his area. The amount of money spent per child in each area from this budget will be on a per capita basis, but expenditures will be made according to differentiated learning needs as identified by the area staff and citizen's advisory committee. Special federal funds will be applied according to guidelines to this basic support level. These funds will be used to pay for programs that local funds are unable to afford.

Several major objectives related to providing equal access to the curriculum for all children will be accomplished through this new organization: (1) School administration will move closer to the people in the community and become more responsive to their desires, (2) Alternative approaches in educational programs will become more feasible for the district, (3) Supervision will become oriented toward staff development.


EL PASO INDEPENDENT SCHOOL DISTRICT
BOARD of TRUSTEES
SCHOOL ATTORNEY
SUPERINTENDENT
ADMINISTRATIVE ASSISTANT
SECONDARY COUNCIL
Deputy Superintendent
ELEMENTARY COUNCIL
COMPTROLLER
Budget Accounting
Purchasing
Construction–Planning
Maintenance
Transportation–Safety
Cafeteria
WEST AREA SUPERINTENDENT
Administrative Assistant
Consultants
Principals
Teachers
Advisory Council
CENTRAL AREA SUPERINTENDENT
Administrative Assistant
Consultants
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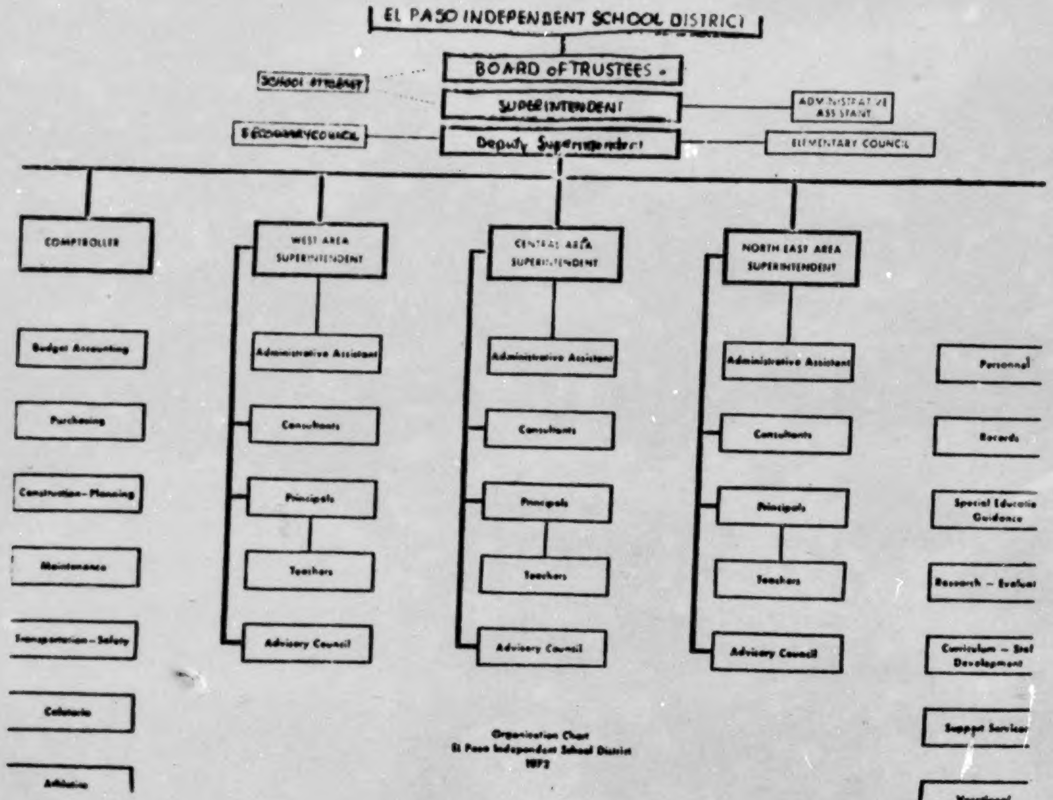
Organization Chart
El Paso Independent School District
1972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El Paso Independent School District
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The Instructional Program

The total school curriculum will be affected by the decentralization of the instructional staff. Simultaneously, district level departments were organized in order to insure effective planning, development, implementation, and evaluation of the comprehensive educational plan.

The area consultant staffs were assigned curriculum areas at two levels--Grades K-3 and Grades 4-12, in order to facilitate providing for differences in regional needs and developing continuity to curricular offerings. The area consultants will be responsible for maintaining current educational efforts, providing information and recommendations on area needs, participating in planning and development through task forces, implementing modifications in instructional programs and new programs, and implementing staff development programs.

Under the new organizational plan the following federal and/or state programs will be within the Department of Curriculum and Staff Development: ESEA Title I, II, and VII, National Teacher Corps, Teacher Center Project, Center Satellite Program and the Texas Teacher Educational Renewal Center Project. In addition to these programs, the Department of Curriculum and Staff Development will assist the three area superintendents in working with ESEA Title II and NDEA III funds. Other programs currently operational or being proposed that would be educational cooperatives with the Region XIX Education Service Center or the University of Texas at El Paso will be coordinated through this department. Through the new design, the district will achieve better program inter-facing, reduce duplication efforts, and concentrate its efforts on a comprehensive child development program.

The Department of Curriculum and Staff Development was organized at the district level to plan and develop new curricula and staff training programs for implementation in the three areas of the city. The department will be staffed by personnel knowledgeable in curricula and staff training areas.

A. Curriculum Review

The Curriculum and Staff Development Department will initiate the review of all curricular offerings through the use of broad-based curriculum review task forces beginning in September 1972. Curriculum review will be for the purpose of determining needs for culturally relevant materials, linguistically appropriate materials, and teaching methodologies that allow for different ways of learning. This information will be utilized in the planning and development of new curricula which makes provisions for cultural differences and linguistic differences.

The Curriculum and Staff Development Department will, for example, review current reports in providing for linguistic incompatibility of a portion of the student population: Pre-School Oral English; Reading Readiness for the Spanish Speaking Child; Bilingual Education (Title VII); Elementary Spanish; High School Spanish; Intensive Language Development (Title I, E.S.E.A.); Speech X (Phonetic Approach to Oral English); and Remedial Reading (Title I, E.S.E.A.). From the material, fiscal, and human resources currently being consumed by these programs an integrated English as a Second Language-Spanish as a Second Language education program K-12, hereafter referred to as ESL-SSL, will be developed. This program as defined by the El Paso Independent School District is as follows: (1) The Spanish speaking child will begin in his native Spanish language and continue to improve his skills in Spanish throughout the curriculum, the end result being greater ability in Spanish. The second part of the program for the Spanish speaking child is that early in his education he will begin to study English as a second language the end result being adequacy in a second language. (2) The English speaking child will begin in his native English language and continue to improve his skills in English throughout the curriculum, the end result being greater ability in English. The second part of the program for the English speaking child is that early in his education he will begin to study Spanish as a second language, the end result being adequacy in a second language.

B. Early Childhood Education Program

The Curriculum and Staff Development Department will study current early childhood education programs--Head Start (O.E.O.); Kindergarten; McCall's Day Nursery; Sunshine Day Nursery; Child Development Laboratory; Castillo de Ninos; Cottage Kindergarten; etc., in order to develop an early childhood education program for 3-4-and 5 year old economically disadvantaged children. The program will reflect compatibility with the child's cultural and linguistic characteristics and will:

(a) Provide instruction in the language system of the child as an additional language system is developed;

(b) Provide for teaching methodology consistent with the child's way of learning;

(c) Provide for the systematic development of basic cognitive, affective, and psychomotor skills;

(d) Provide for the development of self-direction and choice-making skills;

(e) Provide for process-oriented curriculum;

(f) Provide for understanding and appreciation of the child's cultural heritage and ethnic identity and that of others;

(g) Provide for small group and individualized instruction;

(h) Provide for utilization of community personnel in paraprofessional and volunteer roles reflective of the student population;

(i) Provide for meeting the non-instructional needs of children;

(j) Provide for comprehensive parental involvement in the total educational program.

A pilot program for early childhood education will be implemented at the beginning of the second semester of the 1972-73 school year. It will focus on 4-year olds not reached by Head Start and 3-year olds. Its scope will depend on the funds available. The program will be expanded as local, state and federal funds are secured for implementation.

C. Grades K-3

The Curriculum and Staff Development Department and the area consultant staffs shall develop and implement a K-3 program which offers all children the opportunity for ESL-SSL instruction that uses the child's native language system(s) as the medium of instruction while proficiency in one or more additional language systems is developed. This shall be accomplished by the implementation of the following:

(1) Grouping of instructional units to include students to be served by teachers and other personnel competent to develop and implement ESL-SSL, bicultural programs;

(2) Team teaching techniques and small group methodologies will be utilized so that a bilingual, bicultural professional staff member will be readily available to every student in the program;

(3) Development of curricular materials and methodologies to reflect cultural characteristics of all students;

(4) Evaluation of all instructional and cultural presentations;

(5) Implementation of both ESL-SSL components as part of the instructional program.

(6) Inclusion of bilingual, bicultural pupil personnel specialists on the staffs of the area superintendents to assist in diagnostic roles for the development of prescriptive teaching.

(7) Initiation of comprehensive staff development activities responsive to the implementation of this program.

This program will be initiated in 15 schools in K-1 in 1972-73, utilizing skills acquired through in-service training. Simultaneously, materials will be developed for complete implementation. In 1973-74, the program in these schools will be extended to Grades 2 and 3 and initiated in K-1 in 15 additional schools. This pattern will be repeated every school year extending it to all schools. The current Title VII Bilingual Education Program will continue in three schools during 1972-73 and will set the pace for ESL-SSL in the city.

D. Grades 4-8

The Curriculum and Staff Development Department and the area consultant staff shall develop and implement a program which will enable all students to participate in an ESL-SSL instructional program. This shall be accomplished by the implementation of the following in the 1972-73 school year:

(1) Grouping of instructional units to make available bilingual, bicultural professional staff and other personnel;

(2) Initiation of ESL for students diagnosed to need additional English language development;

(3) Initiation of SSL or improvement of Spanish as a first language;

(4) Team teaching techniques and small group methodologies;

(5) Implementation of individualized, individually prescribed and small group instruction;

(6) Development of culturally relevant instructional materials;

(7) Inclusion of bilingual, bicultural pupil personnel specialists on the staffs of the area superintendents to serve in diagnostic roles for the development of prescriptive teaching;

(8) Continued expansion of a comprehensive counseling program using bilingual, bicultural personnel focusing on dropout prevention and increasing the availability of academic options;

(9) Evaluation of all instructional and cultural presentations by area superintendents and their staffs.

E. Grades 9-12

The Curriculum and Staff Development Department and the area consultant staffs shall develop and implement an instructional program including course offerings, instructional materials, and the methodologies which capitalize on the capabilities of students who have been involved in an ESL-SSL program. This shall be accomplished by implementation of the following:

(1) Continued employment of bilingual, bicultural personnel in the guidance and counseling program of the school as vacancies become available. The goal is to reach a point where a counseling staff is reflective of the racial and ethnic composition of the student body in the school it serves.

(2) Continued employment of bilingual, bicultural personnel to coordinate planning, development, and implementation of all curriculum improvements;

(3) Continued employment of bilingual, bicultural personnel to implement English as a second language and Spanish as a second language instruction on a prescriptive basis;

(4) Continuation of courses which develop an understanding of the child's cultural heritage and that of others;

(5) Continuation of an inter-cultural awareness and understanding program using group dynamics techniques and other appropriate strategies;

(6) Evaluation of all instructional and cultural presentations;

(7) Evaluation of vocational education and home economics programs in terms of relevance to community present and projected needs and maintenance of student-centered decision making as to options within and without vocational education;

(8) Development of an intensive program to identify scholarships and financial assistance for disadvantaged and all other students, and evaluation of that program's results at the conclusion of the 1972-73 school year.

Staff Development

Staff Development will be the dual responsibility of the area consultant staffs and the Department of Curriculum and Staff Development. The El Paso Public Schools will develop and implement a comprehensive staff development program to increase the capabilities of the district's staff (administrative, instructional, counseling, and paraprofessional) to deliver an educational program which responds to the needs of all students.

Staff Development will be a major activity during 1972-73. The management plan to implement Staff Development and to insure continued development has already been established. The staff training will include the following:

1. Community awareness training that includes School Board members, key community personnel, administrative staff, teaching personnel, counseling and guidance personnel, and parents; it will reach as a minimum in 1972, 360 staff members.
2. English as a second language training;
3. Spanish as a second language training;
4. Individualized instruction techniques and differentiated staffing patterns;
5. Language learning and reading disabilities prevention;
6. Pupil diagnosis, prescriptive teaching, and behavior modification strategies;
7. Tests and measurements techniques for measuring bicultural student performance;
8. Evaluation of staff development in terms of behavior modification in staff and students and cognitive gains of students and increased parental participation in school.

Staff Development Objectives, by Training Component, 1972-73

1. Prevention of Reading Disabilities
   a. Teachers will recognize appropriate methods of teaching developmental reading.
   b. Teachers will use methods presented in their training in the work in their own classrooms.
   c. Teachers will recognize linguistic problems of the Spanish speaking child and apply appropriate corrective measures.

- d. Teachers will recognize and use teaching methods which capitalize on the linguistic advantages of the bilingual pupil.
- e. Teachers will recognize the reading disabilities pupils may encounter and use appropriate corrective measures.
- f. Teachers in the content fields will be able to help their pupils develop the skills necessary for interpreting essential reading materials.
- g. Teachers will be able to select bicultural reading materials appropriate for children in a bicultural society.
- h. Teachers will develop empathy for the psycho-personal needs of pupils who are learning to read.
- i. The school district will develop strong relationships between this training, the Title I remedial reading program, the Title VII bilingual education program, and LEA reading programs.

2. Bilingual Education - Intensive Language Development and ESL-SSL

- a. Teachers will apply the basic elements of phonology, morphology, and syntax of English/Spanish in their work with monolingual children.
- b. Teachers will make use of the basic elements to teach appropriate grade level English/Spanish literature.
- c. Teachers will make use of basic linguistic principles to teach appropriate grade level oral expression, reading, and writing composition, in that order.
- d. Teachers will recognize and use the appropriate methods of teaching these disciplines in their own classrooms as a result of their training.
- e. Teachers will be able to diagnose linguistic deficiencies of students and prescribe appropriate corrective measures.
- f. Teachers will be able to select and use appropriate materials and textbooks for individual and group needs.
- g. Teachers will develop empathy for the problems in language acquisition by the monolingual child.

3. Individualized Instruction

- a. Teachers will apply valid theories related to teaching for individual differences in their work with target area children.

- b. Teachers will put into effect new methods of management for individualizing instruction.
- c. Teachers will make effective use of new learning materials appropriate for individualizing instruction.
- d. Teachers will develop a cooperative organization for planning and teaching.
- e. Teachers will develop flexible scheduling of instructional time.
- f. Teachers will make effective use of new and different classroom furniture and teaching equipment.

4. Human Relations

- a. Teachers will be able to demonstrate appropriate listening skills in their classrooms.
- b. Teachers will recognize cultural expressions in non-verbal behavior.
- c. Teachers will use problem solving techniques presented in their training in their classrooms.
- d. Teachers will recognize personal and group communications blocks.
- e. Teachers will recognize personal prejudices and identify reasons for those prejudices.
- f. Teachers will recognize similarities and differences between the two dominant cultures in El Paso Independent School District.
- g. Teachers will be able to utilize their training in forming their own action plans for the classroom.

COMPREHENSIVE INSTRUCTIONAL PLAN

January 24, 1972-February 4, 1972	On-site review team from Regional Office of HEW in El Paso
March 1-3, 1972	Second on-site review by team from Regional Office of HEW
June 13, 1972	Date of summary of conclusions letter from Regional Office of HEW to Dr. H. E. Charles
July 5-8, 1972	HEW Educational Program team visit to El Paso
July 14, 1972	Date of report of HEW Educational Program Team
July 17, 1972	Report of HEW Educational Program Team received by Dr. H. E. Charles
July 17-26, 1972	Preparation of El Paso Independent School District response to Regional HEW Office directive
July 19, 1972	Decentralization Plan approved by Board of Education, effective immediately
July 27, 1972	El Paso Independent School District response mailed to Regional Office of HEW
August 2, 1972	Probable date for discussion between members of Regional Office of HEW and members of El Paso Independent School District to the districts response
September, 1972	Begin first in-service class in Prevention of Reading Disabilities, 30 hours, 30 participants
	Begin 30 week in-service class in Bilingual Education - Intensive Language Development and ESL-SSL Training for 120 participants. Each participant will receive 30 hours of training.
	Begin in-service class in Individualized Instruction Techniques, 30 hours, 30 participants

	Begin in-service classes in Human Relations Training. During the period, September 1972-May, 1973, two-hundred sixty (260) teachers selected from methodology training in-service classes will participate in Human Relations Training. One hundred thirty (130) teachers will receive 8 hours training and one-hundred thirty (130) teachers will receive 16 hours training. An additional one-hundred (100) teachers not receiving training in methodologies will participate in 32 hours of Human Relations Training.
	Begin process evaluation of in-service training classes to provide continuous control and refinement of plans and procedures.
	Task force committees become operational. Committees will be assigned to: (1) Goals and Priorities, (2) Scope and Sequence, (3) Policies and Governances, by individual school, by decentralization areas, and district-wide, (4) Curriculum, Materials and Methodologies, (5) Co-curricular, (6) Special Education, (7) Pupil Appraisal, (8) Planning and Evaluation, (9) Staff Development, (10) Non-instructional needs, (11) Parent-Community Involvement, and (12) Public Relations. Committees will have representation from community, professional associations, students, other educational agencies, teachers, and administrative personnel. Coordination will be maintained by the Department of Curriculum and Staff Development. Each committee will conduct an in-depth study of its area, as it relates to the five areas of incompatability, poverty, culture, language, mobility, and societal perceptions. Final reports to include strengths, weaknesses and recommendations will be due in January, 1973.
	Advisory Councils become operational in the three areas of the city.
	Departments of Curriculum and Staff Development begins in-depth survey of (1) city-wide efforts in early-childhood education and (2) external funding sources
October, 1972	Continuation of studies begun in September

November, 1972

Continuation of studies begun in September

Continuation of in-service classes

December, 1972

Continuation of studies begun in September

Continuation of in-service classes

Begin second in-service class in Prevention of Reading Disabilities, 30 hours, 30 participants

Begin second in-service class in Individualized Instruction Techniques, 30 hours, 30 participants

January, 1973

Task force committee reports due

Comprehensive Educational Plan will be developed by area as follows:

- I. Area of concern
- II. Statement of need
- III. Identification of all known problems
  - A. Availability of personnel
  - B. Cost
  - C. Facilities
  - D. Teacher training
  - E. Staff utilization
  - F. Time factor
  - G. Etc.
- IV. Five-year objectives
- V. First-year objectives
  - A. Implementation of instructional program
  - B. Curriculum development (acquisition, adaptation, and development of materials)
  - C. Staff development
  - D. Community involvement
- VI. Management and process
  - A. Planning
  - B. Organizing
  - C. Staffing
  - D. Staff development
  - E. Evaluation
  - F. Reporting
  - G. Communication
  - H. Coordination
  - I. Dissemination

Continuation of in-service classes

Selection of fifteen (15) schools to begin ESL-SSL programs in Grades K-3 during 1973-74 school year

Begin curriculum development and teacher training for implementation of ESL-SSL program in Grades K-3 beginning with 1973-74 school year

February, 1973

Continuation of development of Comprehensiv Educational Plan

Continuation of in-service classes

Continuation of development of ESL-SSL program

March, 1973

Completion of Comprehensive Educational Plan

Begin development of plans for implementati of 1973-74 segment of Comprehensive Educati al Plan

Begin curriculum development and staff development training for 1973-74 programs through curriculum workshops and in-service training classes. Both curriculum and staf development will continue from March 1973-April 1974

Continuation of in-service classes

Begin third in-service class in Prevention of Reading Disabilities, 30 hours, 30 participants

Begin third in-service class in Individualized Instruction techniques, 30 hours, 30 participants

Continuation of development of ESL-SSL program

April, 1973

Continuation of curriculum development workshops and staff development in-service train ing for 1973-74 programs

Continuation of in-service classes in method ologies and Human Relations training

Continuation of development of ESL-SSL program

May, 1973	Continuation of curriculum development workshops and staff development in-service training for 1973-74 programs
	Continuation of in-service classes in methodologies and Human Relations training
	Continuation of development of ESL-SSL progr
June, 1973	Continuation of curriculum development workshops and staff development in-service training for 1973-74 programs
	Continuation of in-service classes
	Begin fourth in-service class in Prevention of Reading Disabilities, 30 hours, 30 participants
	Begin fourth in-service class in Individualized Instruction techniques, 30 hours, 30 participants
	Continuation of development of ESL-SSL program
July, 1973	Continuation of curriculum development workshops and staff development in-service training for 1973-74 programs
	Continuation of in-service classes
	Begin fifth in-service class in Prevention of Reading Disabilities, 30 hours, 30 participants
	Continuation of development of ESL-SSL program
August, 1973-July, 1974	Implementation of new, expanded and revised programs
	Continuation of curriculum development and staff development in-service training for 1973-74 programs
	Begin curriculum development and staff development training for new, expanded and revised programs to be operational during 1974-75 school year
	Implementation of ESL-SSL program, Grades K-3, in fifteen (15) schools

	Selection of fifteen (15) additional schools to begin ESL-SSL program, Grades K-3, during 1974-75 school year
	Teacher training for expanded ESL-SSL progra
	Implementation of Grades 4-8 and 9-12 programs on a priority and funds available basis
August, 1974-July, 1975	Implementation of new, expanded and revised programs
	Continuation of curriculum development and staff development in-service training for 1974-75 programs
	Begin curriculum development and staff development training for new, expanded and revised programs to be operational during 1975-76 school year
	Implementation of ESL-SSL program in fifteen (15) additional schools
	Selection of fifteen (15) additional school to begin ESL-SSL program, Grades K-3, durin 1975-76 school year
	Teacher training for expanded ESL-SSL program
	Implementation of second generation of Grades 4-8 and 9-12 programs on a priority and funds available basis
August, 1975-July, 1976	Implementation of new, expanded and revised programs
	Continuation of curriculum development and staff development in-service training for 1975-76 programs
	Begin curriculum development and staff development training for new, expanded and revised programs to be operational during 1976-77 school year
August, 1976	Implementation of Total Comprehensive Educational Plan as agreed upon in August, 1972

Operational Procedures Plan "A" Special Education
El Paso Public Schools
1972-73 School Year

I. Organization

Plan "A" Special Education will decentralize its supportive staff to fit the new area superintendent concept. Each of the three area superintendents will be assigned a support team composed of one consultant, one psychologist, one special education counselor, and from three to five educational diagnosticians depending upon student population. Each area superintendent will be responsible for determining the most effective placement of these personnel.

The director and coordinator will be responsible for providing supportive help to each area superintendent in the administration of the Plan "A" concept; i.e., individualization of instruction for children with special needs.

Plan "A" contains many possible instructional arrangements. The El Paso Public Schools have developed one or more resource rooms on each campus to aid those students who are having educational or behavioral difficulties. Although the focus is on educational needs, state reporting requires categorization of these children. Any resource room may contain a variety of handicapping conditions--e.g., educable mentally retarded, minimally brain-injured, orthopedically handicapped, language and/or learning disabilities, emotionally disturbed, blind, auditorially handicapped. Educable mentally retarded are not segregated as was the case prior to August of 1970.

Those students with severe handicapping conditions who cannot be served in a regular resource room are considered for placement in a self-contained setting. Some examples are: trainable mentally retarded, Highland School; orthopedically handicapped, Rehabilitation Center, Bonham Elementary, Hillside Elementary, MacArthur Elementary-Intermediate, Ross Junior High, Burges High; Deaf, County-Wide Day School for the Deaf, Hillside Elementary and Austin High School.

This new organization should allow for maximum use of both personnel and facilities. Plan "A" will function as a supportive service to the regular instructional program to supplement the educational process. The resource room will be primarily an extension of the regular classroom rather than a replacement for instruction that could be, or should be, offered in the regular classroom.

II. Personnel

All instructional staff and supportive personnel who are on permit must have taken a minimum of six hours of graduate training during the academic year or the summer to be reinstated for the 1972-73 school year. Every attempt will be made to hire fully certified personnel when filling vacancies or new positions. No unqualified diagnosticians will be utilized.

Appraisal Process

Screening. 1. In the decentralization process each school principal will be responsible for gathering, analyzing, and evaluating adaptive behavior data and sociocultural background information relating to the non-school environment of the student being reviewed for assignment.

Information pertaining to the incentive-motivational and learning styles unique to the student will be collected. In addition, information related to the linguistic competencies, interpersonal skills, and behavioral patterns established between the student and his parents, other adult family members, siblings, neighborhood peers, and fellow students will be solicited.

The sociocultural background information gathered will include data related to family socialization practices which may assist in the formulation of new teaching strategies which are compatible with the incentive-motivational and learning styles of the child.

To assist the principal in these tasks, additional personnel will be included. Special education counselors will be assigned to each area superintendent. Additional regular counselors will be provided in Title I schools. Bilingual teacher aides familiar with the school neighborhood will be taught how to collect such data. All of these personnel will team together to gather educationally relevant data which will aid the school in structuring the learning environment to meet the educational and behavioral needs of the individual student.

To further assure community involvement in the assignment of students to classes for the mentally retarded, area 8-member advisory committees will be formed. There will be five (5) members from the disadvantaged socio-economic group who are parents of children currently in school, a special education teacher, another teacher, and a representative of the superintendent. A committee of persons with professional and technical competencies will be established to assist and advise the area advisory committees.

These area advisory committee members will be chosen from community organizations that are representative of the minority and non-minority groups to be served. The committee will be: (1) Consulted regularly on all matters of substance affecting assignment of students to classes for the mentally retarded; (2) Review any recommendation for pre-assignment testing and evaluation, and any decision to assign students to Special Education classes for the mentally retarded.

Training will be provided to familiarize parent-advisory committee members with the Special Education program. This will include, but not be limited to, information on the processes of screening, assignment, review, dismissal, curriculum, and the relationship between the resource room and regular classroom.

2. Each school principal will be responsible for gathering, analyzing and evaluating all educational, medical, psychological, and sociocultural information available in the school. Support staff will be used as needed.

3. The school nurse will administer vision and hearing screening tests to rule out gross abnormality.

4. The speech therapist will evaluate each child for speech and language development problems.

5. Two to three teacher aides will be assigned to each area superintendent to gather sociocultural information from the home.

6. The parent will have continual access to all school personnel and will be advised of this access by bilingual aides or other staff. To insure due process, she may consult with members of the area superintendent's Special Education Advisory Council, members of the Department of Guidance and Special Education Advisory Committee, and the Board of Trustees.

7. At this time the screening committee composed of principal, teachers, parents, and other professional personnel would decide upon one of the following solutions:

- a. Return to regular class with no modification.
- b. Return to regular class with modification in teacher techniques or materials.
- c. Referral to outside agencies such as Family Counseling, Child Welfare, Vocational Rehabilitation, Public Health Clinic, medical practitioners.
- d. Referral for further educational planning to special education supportive staff (consultant, educational diagnostician, psychologist, special education counselor, coordinator, director).

8. If the decision involves a recommendation for testing and evaluation, a visit will be made to the parents' home to explain the testing process and obtain parental permission to test through a signed form. If testing and evaluation indicate referral for educational planning, a second visit will be made to the home. On this visit, a full explanation of the results of the screening and testing procedure will be given. The visitor will explain the implication of assignment outside the regular classroom for part of the day before obtaining the signature of the parent. Additionally, the parent will be given information on how to contact the Special Education Advisory Committee serving the school the child is attending.

9. It is at this time that the principal should request that the student obtain a medical evaluation. He also determines whether or not a parent can afford to pay for the medical evaluation. If the parent cannot, a special form is hand carried by the parents requesting that the physician of choice bill the Department of Guidance and Special Education.

10. In the decentralization procedure each home school principal will become responsible for maintaining the official confidential folder on each student in his school. These folders will be subject to continual local audit by a newly created position, that of program evaluator developer. These folders also will be subject to State and Federal audits.

11. The completed referral form, speech, hearing, and vision screening reports, medical evaluation, summary of observable school behavior, academic performance, sociocultural background information, and adaptive behavior are given to the appraisal specialist. From the above mentioned reports possible educational problem areas are pinpointed and an educational evaluation is conducted which will result in pertinent educational programing.

12. The completed educational plan is returned to the local admissions, review, and dismissal committee for formal review, implementation, and placement. The parent is an integral part of this committee and gives written permission for placement in the resource room or self-contained classroom.

13. Supportive staff members (consultant, special education counselor, educational diagnostician, psychologist) will continually interact with all school personnel involved in the education of the student. They should encourage a systematic modification and adaptation of instructional techniques, materials, and equipment to meet the educational needs of the exceptional child. The child's progress will be monitored and emphasis will be placed upon his return to the mainstream of education.

14. In the decentralization process prime consideration has been given to the assignment of qualified and certified bilingual, bicultural appraisal specialists to each area superintendent. These personnel will be used to evaluate Spanish-surnamed individuals. It

will be their responsibility to choose the appropriate diagnostic tests used in the educational evaluation. These tests will be administered in the language of the home.

15. All students are evaluated to determine their educational needs. In addition, it is required that each student be labeled by handicapping condition for State reporting to the Legislature. We are aware that tests normed on middle-class white populations are inadequate for minority groups. However, until such time as culturally sensitive tests become available we will continue our evaluation procedure in order to complete these reports. The safeguard stated in 13 above will be in effect.

16. The Department of Guidance and Special Education operates under the philosophy that educational problems demand an educational evaluation so that educational programing may be done. Therefore, each evaluator must determine which tests he will use to analyze the problem presented. The educational problem may be presented as one in reading, arithmetic, spelling, handwriting, language development, speech, peer relations, visual perception, or motor coordination. The evaluator must analyze the reason(s) for the educational problem. He would select tests to analyze the possible reasons for the reading difficulty, the spelling problem, the difficulty with arithmetic. He would then develop a series of educational recommendations to correct the educational problem. Many tests are available to assess any of the above-mentioned areas. The individual training, sophistication, and bias of the evaluator determine which tests will be used.

17. In the 1972-73 school year, pre-service and in-service training programs will be developed for regular teachers, resource room teachers, and supportive staff members. The purpose of the training will be to develop a better understanding of the relationship between regular classroom teachers and resource room teachers in the refinement of teaching methods for students with special learning problems. In development of a curriculum for this training, emphasis will be placed on teaching culturally different children; that is, all curricula offerings should be re-examined in terms of bilingual and non-bilingual children. Among topics to be covered are: the Plan "A" concept, roles of the various professionals and paraprofessionals, identifying the exceptional child, evaluating the exceptional child, learning disabilities and the regular classroom teacher, diagnostic teaching, language development visual perceptual problems, classroom management, working with the emotionally disturbed.

18. During the first semester of 1972-73 school year, the folders of all special education Spanish-surnamed students will be reviewed to determine those students whose assignment to special education classes may have been influenced by a lack of English language skills.

The criteria used in identifying will include at least the following: (1) Any student who has at least a 10 point difference between verbal and performance scores on the WISC test or any other test providing similar data; (2) Any student whose folder contains a notation that he came from a predominantly Spanish-speaking home and/or his predominant linguistic skills were those of the Spanish language; (3) Any Spanish-speaking student originally tested and assigned by non-Spanish-speaking evaluators.

Information will be solicited from teachers or principals who might have knowledge on the assignment of certain students to Special Education classes primarily on the basis of their lack of English language skills.

Students identified as having possibly been misassigned will be re-evaluated during the first semester. This process will take into account the child's dominant language and culture and utilize all current evaluation procedures.

Personnel

I. Employment Procedures

The total teaching staff of the El Paso Independent School District numbers approximately 2,750 teachers. Of this number, 725, or approximately 29%, are members of minority races. A recent survey has shown that this 29% of minority races in the teaching force of the El Paso Independent School District is the largest minority percentage existing in any major city in the state of Texas.

It is the goal of the Personnel Department of the El Paso Independent School District to reach a racial balance in the teaching staff within the next five years, which would be September, 1977. To create this racial balance, there is the need for approximately 800 additional teachers of minority background. Based on this goal, the expected annual increase is 160 new hires over the five year period. Recognizing the variables in recruitment of new staff, such as attrition, availability and resources, it is anticipated a 5-10 percent plus or minus variance in the goals of 160 new hires per year.

Each year there are approximately 300 new teachers employed, with 35%, or 125, being members of minority groups. At the same time, resignations include a proportional share of minority teachers so that the annual increase in minority hirings is significantly smaller than the number employed.

Between February, 1971 and June, 1972 the percentage of minority teachers has, through recruitment practices, been increased from 22% to 29%. These practices include regular visits to the University of Texas at El Paso and assistance from placement offices at Sul Ross State University at Alpine, New Mexico State University at Las Cruces, Texas Tech at Lubbock, West Texas State University at Canyon, University of Texas at Austin, North Texas State University and Texas Woman's University at Denton, and the University of New Mexico at Albuquerque.

The following is this system's plan to attempt to reach this goal: recruitment by personal interviews on the campuses of the University of Texas at El Paso, Sul Ross State University at Alpine, and New Mexico State University at Las Cruces; constant communication by telephone and by mail in the form of brochures containing information about the El Paso school system, the salary schedule, and advancement policies; listings of El Paso's needs from the standpoint of vacancies in the various categories of the instructional program.

A survey will be made of the colleges and universities in Arizona and California to determine those schools which have significant numbers of minority groups enrolled. On the basis of this survey, brochures and application forms will be sent to those locales. Listings of openings in the various categories of El Paso's instructional program will also be sent. Salary schedules, information about fringe benefits, opportunities for advancement, and information that might make the El Paso Independent School District an attractive place for consideration by minority groups will also be sent.

At the present time, the salary schedule of the El Paso Independent School District compares favorably with all major cities in the state of Texas.

Identification of minority groups will be done by surname insofar as possible. In the case of applicants of Mexican American background, the surname generally can be used for identification. However, interracial marriages have resulted in many persons of dual background, bilingual nonetheless, and these may be identified as Mexican American where applicable. In cases of this nature, definite identification will be done by personal interviews. Since it is impossible to identify Negroes by surname, the identification of this group will have to be made through personal interviews.

Once identified, members of minority races will be selected through consideration of educational background. Selection will be made on the basis of college degree, certification, both professional and character references, personality, voice, personal appearance, and attitude. Particular attention must be given to certification qualifications, since the El Paso Public Schools must operate strictly under the certification laws of the state of Texas.

II. Reassignment of Teachers to Meet Title VI Requirements

Preliminary information indicates that any changes which are to be proposed by our curriculum committee for the 1972-73 school year will not affect general staff requirements on each campus. Therefore, the Personnel Department intends to follow present staff requirements and reduce the number of minority teachers in those schools which exceed the systemwide average in accordance with the following approved proposal:

> "It is proposed that the plan of reassigning teachers be implemented by first determining the campuses where the ratio of minority teachers exceed the school district ratio.
>
> Secondly, we would ask the principal of each campus involved to identify and defend the retention of any minority teacher needed on that campus for special programs for which a replacement would need extra training, such as the need for a bilingual teacher. The only exceptions to the policy of maintaining uniform proportions of minority teachers throughout the school district would be cases in which the principal has justified the need to keep certain minority teachers for special programs which might cause certain campuses to exceed the district ratio. The Principal's recommendation would be in writing and maintained on file in the Personnel Office.

Thirdly, we would begin cross transfers to reduce the proportion of minority teachers on campuses involved to match the school district ratio, with the exception cited above.

The effect of these actions will insure the district's compliance under the faculty assignment provision of Title VI of the Civil Rights Act of 1964 as enunciated in the Singleton Decision. The district will continue to follow this assignment practice in the future.

The same program would be used for reassignment of nonteaching staff who work with children." See Exhibit I.

The schools, specific numbers, and percentages are shown on the attached distribution sheet as of July 19, 1972. See Exhibit II. The exceptions which have been allowed due to principal's specific requests for exemptions are marked with asterisks and the principal's specific requests are attached.

III. Policies to Facilitate the Training and Credentialing Process for All Staff

We recognize that it is the responsibility of the El Paso Public School to facilitate the improvement of staffing patterns in our school district in light of the programmatic efforts being made to improve the quality of instruction for our bilingual bicultural children.

A. We, therefore, commit ourselves to implement a long range plan which will address itself to the training and credentialing process for all staff.

B. We commit ourselves to actively seek funding from private, state, federal, or other sources for all or part of programs such as released time for teacher training.

IV. Special Career Development Program

We recognize the need for a Special Career Development Program which will provide and support the identification, multi-level entry and placement of Mexican Americans and other minority group members into all levels of the school system. Therefore:

A. We commit ourselves to implement a long range plan which will insure the staffing in all school campuses which have bilingual, bicultural programs with an adequate bilingual, bicultural staff. As a minimum this year, the district will: (1) Identify personnel skills, competencies, degrees, etc., during the 1972-73 school year; (2) Establish a skill bank to be used as a basis for training teacher aides; (3) Initiate action to develop a college credential program that will provide greater opportunity for paraprofessional staff.

B. We commit ourselves to a plan which will train teacher aides in content areas with the possibility of some release time for this training.. We will continue to cooperate with the Regional Service Center's Career Opportunity Program for the purpose of training teacher aides to become certificated teachers.

C. We commit ourselves to the development of a long range plan which will offer an equal opportunity to all qualified staff for advancement into all levels of the school system. Such a plan might include the following:

1. The area superintendents will initiate recommendations to the Superintendent to fill all vacancies in administrative and supervisory positions that may exist in their area.
2. On the basis of objective criteria established by the Superintendent's Office, the area superintendents will continuously identify individuals who have shown exceptional ability within their area and who have completed certification requirements for administrative and supervisory positions. They will submit a list of these individuals to the Superintendent who will make this information available to all other area superintendents.
3. Final approval on the selection will be the responsibility of the School Board.

V. Time Schedule

We commit ourselves to the development of a time schedule for the purpose of bringing the total school system to an equitable level in terms of the minority student population and minority employment in administrative, supervisory, and teaching levels, basing our estimates on current employment patterns we anticipate that by the fall of 1977, our staff will be equitably distributed throughout the system.

VI. Dissemination

We commit ourselves to the implementation of a plan that will insure the adequate dissemination of information on specific selection criteria to all levels of the system and the community. Such a plan might include dissemination through:

A. The Administrative Communication to be posted on bulletin boards on each campus.

B. Announcements at the individual school principals' staff meetings.

C. Brochures will be sent to all major sources of teacher supply.

EXHIBIT II

Ethnic Distribution
July 19, 1972

School	Total Positions	Maximum Minority	Number Minority	Percent	To Be Transferred
Alamo	33	11	20	61%	9
Alta Vista	37	12	15	41%	3
Aoy*	37	24	27	73%	3
Bassett	39	13	12	31%	
Beall*	38	17	21	55%	4
Bliss	38	13	6	16%	
Bonham	18	6	2	11%	
Burleson*	42	15	23	55%	8
Burnet	27	9	6	22%	
Canyon Hills	12	4	3	25%	
Cielo Vista	23	7	4	17%	
Clardy	51	17	23	45%	6
Coldwell	31	10	4	13%	
Cooley	45	15	22	49%	7
Crockett	46	15	13	28%	
Crosby	40	13	5	13%	
Douglass	33	11	18	55%	7
Dowell	36	12	6	17%	
Fannin	48	15	12	25%	
Franklin*	10	4	5	50%	1
Hart*	26	19	21	81%	2
Hawkins	31	10	10	32%	
Henderson	[illegible]1	20	24	39%	4
Highland	15	5	5	33%	
Hillside	37	12	9	24%	
Houston	36	12	9	25%	
Hughey	39	13	6	15%	
Lamar	48	16	22	46%	6
Lincoln	16	5	4	25%	
Logan	32	11	8	25%	
MacArthur	43	14	4	9%	
Magoffin	60	19	10	17%	
Mesita	30	10	7	23%	
Milam	23	7	6	26%	
Morehead	50	16	11	22%	
Newman	37	12	6	16%	
Park	21	7	2	10%	
Putnam	28	9	3	11%	
Roberts	24	8	4	17%	
Roosevelt	24	8	16	67%	8
Ross	64	20	13	20%	
Rusk	32	11	15	47%	4
San Jacinto	16	5	7	43%	2
Schuster	17	5	3	18%	
Stanton	43	14	9	22%	

Ethnic Distribution (continued)

School	Total Positions	Maximum Minority	Number Minority	Percent	To Be Transferred
Travis	22	7	5	23%	
Vilas	20	6	5	25%	
Wainwright	18	6	8	44%	2
Western Hills	25	8	4	16%	
White	38	12	3	8%	
Zavala	37	12	23	62%	11
Andress High	101	32	11	11%	
Austin High	117	39	16	14%	
Bowie High	117	39	55	47%	16
Burges High	112	36	13	12%	
Coronado High	99	32	9	9%	
El Paso High	91	29	18	20%	
Irvin High	116	37	10	9%	
Jefferson High	140	46	45	32%	
Technical Center					
TOTALS	2672	898	717	27%	103

*Exemptions exceed 33% of staff

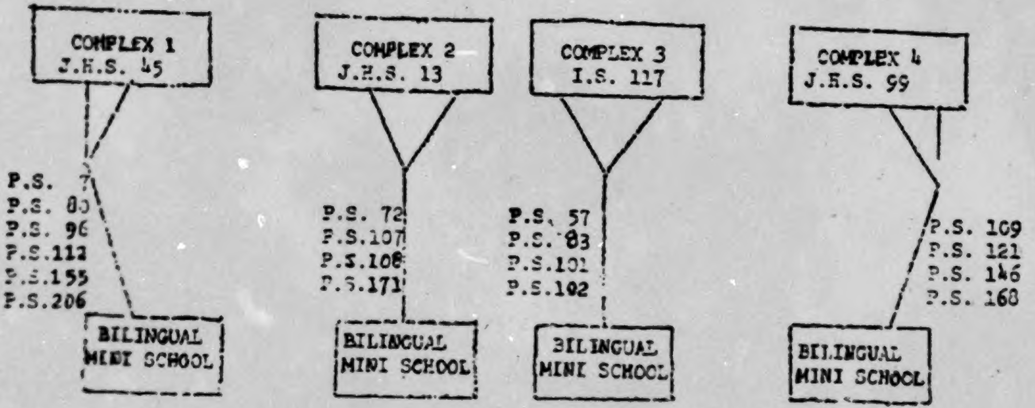
APPENDIX II

BILINGUAL - BICULTURAL MINI-SCHOOL

(elementary level)

to be submitted to
E.S.A.A. for funding
by Community School
District #4

PROPOSED BILINGUAL PLAN FOR COMMUNITY SCHOOL DISTRICT #4


COMPLEX 1
J.H.S. 45
P.S. 7
P.S. 80
P.S. 96
P.S.112
P.S.155
P.S.206
BILINGUAL MINI SCHOOL
COMPLEX 2
J.H.S. 13
P.S. 72
P.S.107
P.S.108
P.S.171
BILINGUAL MINI SCHOOL
COMPLEX 3
I.S. 117
P.S. 57
P.S. 83
P.S.101
P.S.102
BILINGUAL MINI SCHOOL
COMPLEX 4
J.H.S. 99
P.S. 109
P.S. 121
P.S. 146
P.S. 168
BILINGUAL MINI SCHOOL

I. Needs Assessment

Community School District 4, located in Manhattan contains an area in East Harlem with a great concentration of Spanish-Speaking pupils. The special census taken in 1972, shows the following:

Total School Population: 17,469

Total Spanish Speaking Population: 11,217

In the 18 elementary schools pupils range from 8.3% to 32.2% at or above grade level in reading.

15 of the Elementary Schools have less than 20% of their pupil population reading on or above reading level.

Of the 632 Elementary Schools in New York City, Community School District #4, schools rank mostly in the last 100 schools, 82% of the elementary schools in the district are ranked below 500. P.S. 155 ranks 609 and P.S. 72 ranks 626. The school with the highest ranking order P.S. 112, still only ranks 315. (see attached list of Ranking of schools by Reading Achievement).

The math achievement scores have not been recieved for school year 72 - 73 however all of the schools in the district report 2 to 2½ years average retardation in math

65% of the total school population in Community School District #4 are Spanish Speaking.

51% of the students in P.S. 101 which ranks 500 in the School Ranking List are of Spanish Speaking background.

75% of the pupils in P.S. 155 which ranks 609, are of Spanish Speaking background, 82% of the students in P.S. 72 which ranks 626 are of Spanish Speaking background. As you can see by these figures and the figures listed in the chart attached, schools with the highest Spanish Speaking population have the lowest reading scores and therefore are ranked in the very botton of the Schools Ranking List.

District 4 is located in a high poverty urban area requiring intensive and individualized attention and special Bilingual Programs to help overcome existing academic impairment.

There is a need to provide the Spanish Speaking Pupil Population with an intensive course in Spanish language arts as well as a complete course of study in English as a Second Language. A more complete course of study in each content area in the students native language must be devised. In order to improve intercultural communication among all of the pupils of District 4 courses in Spanish as a second language as well as courses in History and Culture of all the students must be offered.

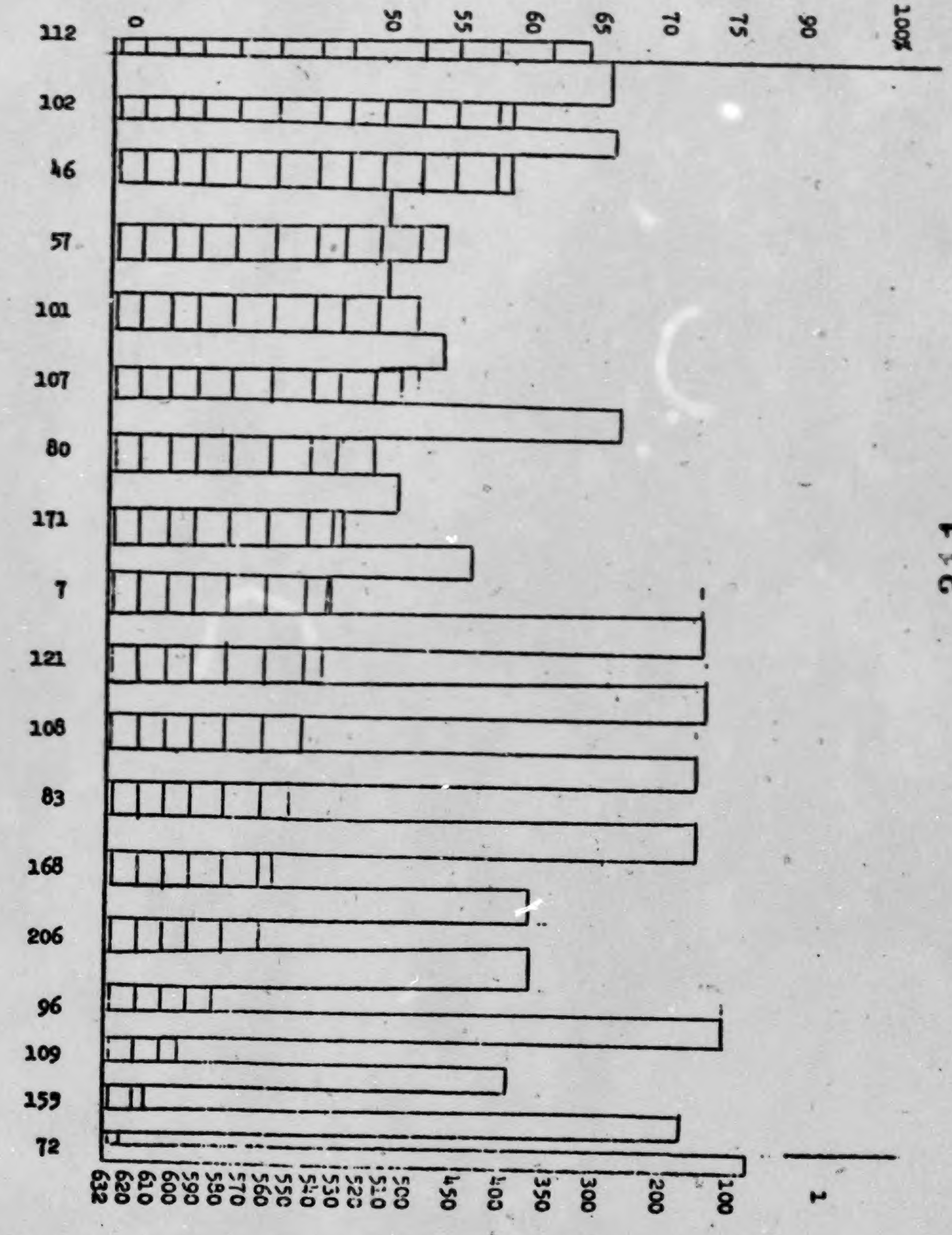
There is a need to provide the pupils and teachers with up to date Bilingual- Bicultural material on all grade levels. Up to now the emphasis has been placed on the production of Bilingual-Bicultural materials in the lower grades (Kindergarten to 3rd. grade), most of the material and local projects have not gone beyond grade 3.

Most of the teacher training projects for Bilingual-Bicultural Education is provided through masters program; therefore the majority of teachers employed in Bilingual programs have not received any training in the philosophy, theory and methodology of Bilingual-Bicultural Education. Intensive preservice and inservice courses are needed. Guidance programs must be instituted to provide for a comprehensive program that will meet the needs of the Bilingual-Bicultural child. There is only one licensed Bilingual Guidance Counselor in the district.

There is a need to involve greater number of Spanish-Speaking parents in all faces of school life. Since most parents feel they are at a loss because they can not communicate in English, they do not participete in school affairs other than those that are related to the Bilingual Programs. This then is an important vehichle for getting more and more parents to participate.

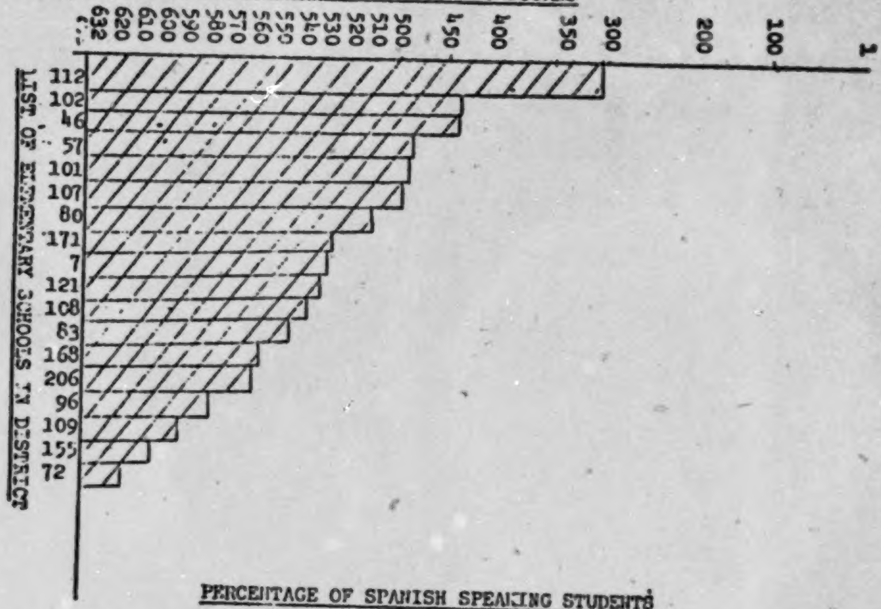
Community District 4 is committed to providing Bilingual-Bicultural Programs for all of the students that need them. Presently there are only 9 schools being serviced with Bilingual Programs out of 18. Each school has 2 bilingual classes, servicing a total of 50 children. There are just 2 coordinators providing all the services of teacher training, curriculum development, parental involvement, guidance services supervision and liaison with the parent school.

SCHOOL RANK ACCORDING TO READING SCORES AND % OF SPANISH SPEAKING

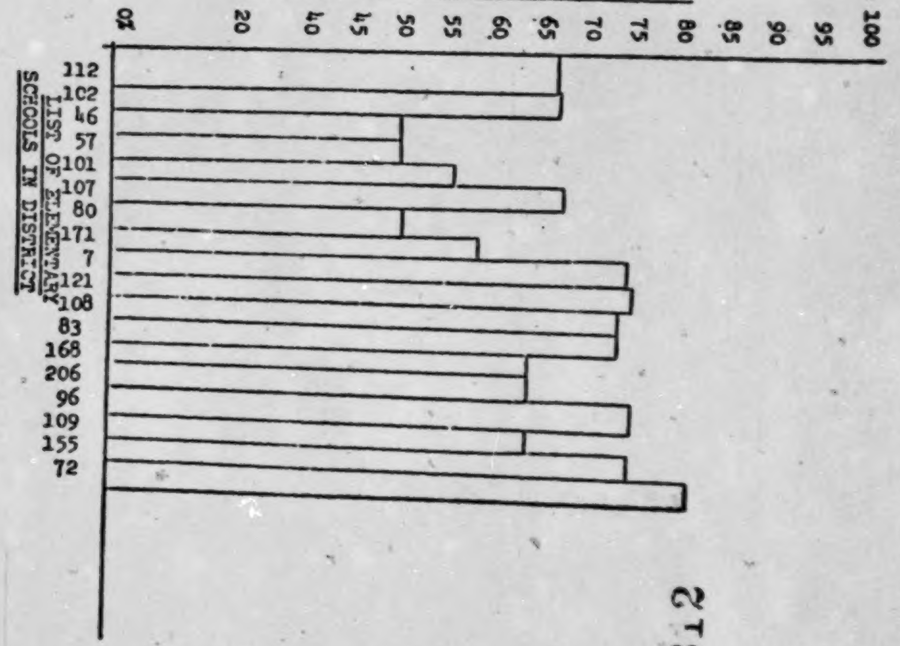


School #	Schools Ranked on Reading Achievement	% on or above grade level	% of Spanish Speaking
P.S. 112	315	32.2	66
P.S. 102	436	22.3	67
P.S. 46	439	22.1	49
P.S. 57	481	19.4	49
P.S. 101	500	18.5	55
P.S. 107	506	17.6	68
P.S. 80	516	17.0	51
P.S. 171	529	17.0	58
P.S. 7	533	16.8	73
P.S. 121	536	16.8	74
P.S. 108	542	16.5	72
P.S. 83	548	16.3	72
P.S. 168	557	15.8	63
P.S. 206	561	15.6	63
P.S. 96	584	13.3	77
P.S. 109	595	12.9	63
P.S. 155	609	11.2	75
P.S. 72	626	8.3	82

SCHOOL RANK ORDER ACCORDING TO READING SCORES



PERCENTAGE OF SPANISH SPEAKING STUDENTS



II Objectives

A. Product

The Bilingual Program in District #4 will operate in 4 Bilingual Learning Centers that will service the 18 Elementary Schools.

The Program will:

1. Prevent or decrease scholastic retardation of children whose native language is not English.
2. Facilitate the academic achievement of Spanish-speaking pupils by teaching them in their own language, while simultaneously developing their skills in English.
3. Maintain and improve the Spanish-speaking pupil's ability in their native language.
4. Provide the English speaking student with Spanish as a Second Language Course.
5. Create a positive self-image and pride in his heritage by using the pupils native language as the language of instruction.
6. Offer students an opportunity to develop functional bilingualism.
7. Provide for enrichment of all pupils by developing an understanding of Black History and Culture.
8. Provide for the enrichment of all pupils by developing an understanding of Puerto Rican History and Culture.
9. Develop a bilingual staff which will have teaching skills as well as language competency in both languages.
10. Develop relevant and appropriate curriculum materials in English as a Second Language, Spanish as a First Language and all content areas for the implementation of a successful bilingual education program.
11. Inform and train the Community so that they may be able to discuss and implement the objectives of a bilingual program.
12. Help parents have direct involvement in the education of their children.

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2. 70% of the pupils will increase their vocabulary by 400 words in Spanish as a Second Language at the end of the project, as measured on Spanish and capacity Test: SWCEL, South Western Cooperative Educational Lab, Albuquerque, N.M.

3. Children will be able to follow simple commands.

4. By the end of the project year children will be able to read simple words and experience charts in Spanish.

D. Content Areas
(Mathematics, Science, Social Studies)

1. 60% of all the students in the project will have covered the N.Y.C. Curriculum in each of the content areas in the Children's dominant Language as measured by:

Metropolitan Mathematical Achievement - English Dominant.

Purebas de Matimaticas - Spanish Dominant Students - PreTest - September 1973 Post test - June 1974 teacher made Tests - Science and Social Studies - after each unit covered.

E. Materials:

1. A Bilingual Resource Center will be established.

2. Available and or published bilingual materials will be made available to all teachers in the program through out the school year 1973-74, so that they may be able to have much workable materials on hand.

3. New Supplementary materials in all subject areas now in use in other bilingual program will be used and if need be adapted to meet the needs of all the pupils in the projects throughout the school year 1973-74.

F. Staff Development

1. 50% of the people in the community will be aware of the objectives and activities of the p-rogram during the school year 1973-74 through public meetings, printed materials and district-wide conferences.

2. 60% of the parents of the children in the project will be directly involved in the planning and carrying out of the activities of the project during the school year.

3. 40% of the parents of the children will take part in workshops conducted by the teachers of the project in order to inform them of what their children are learning.

4. 20% of the parents of the children in the project will help conduct in workshops for teaching of the history and culture of the children in the project.

5. A bilingual newspaper will be prepared by the teachers and parents, highlighting the events taking place in the project and providing general information for the community at large.

PARENT INVOLVEMENT

1. 50% of the people in the community will be aware of the objectives and activities of the program during the school year 1973-74 through public meetings, printed materials and district-wide conferences.
2. 60% of the parents of the children in the project will be directly involved in the planning and carrying out of the activities of the project during the school year.
3. 40% of the parents of the children will take part in workshops conducted by the teachers of the project in order to inform them of what their children are learning.
4. 20% of the parents of the children in the project will help conduct in workshops for teaching of the history and culture of the children in the project.
5. A bilingual newspaper will be prepared by the teachers and parents, highlighting the events taking place in the project and providing general information for the communi at large.

Program Design

The program will operate in four mini-schools, one in each complex, that will service the 18 elementary schools in District #4.

Each Mini-school will have 12 classes, 2 classes on each grade level. Both Spanish dominant and English dominant students will participate. the children will be grouped according to their proficiency in their own native language. The Cultural Heritage will be part of the Language Arts, Science, English as a Second Language, Spanish as a Second Language curriculum. Emphasis in inter-cultural understanding will be given in the Social Studies curriculum. In order to achieve maximum results in the program, class size will be limited to 25 children.

Children will be given intensive work in Language Arts, in the child's dominant language. Spanish Dominant children, will receive 90 minutes daily of English as a Second Language instruction. English Dominant children will receive 45 minutes of Spanish as a Second Langua

The project Director willprepare her room and the subject area in order to provide for opportunities to work individuall with children. There will be a paraprofessional that in each classroom, that will assist the teacher in providing individual assistance to her students.

Parents will be given the opportunity to help in the selection of cultural materials, projects and other resources . they will be involved in all facets of the program. Workshops will be conducted to encourage participation and develop leadership. Parents will contribute with their knowledge and expetise of their own cultural heritage in the preparation of materials, programs which will benefit the pr people of both cultures. Parents will further serve as a liasion between the rest of the community and the school.

The guidance Counselor, one in each center will interview, screen and help with the selection of the children in the -program. The guidance Counselor will organize her program according to the needs of the children and the community. She will hold periodic individual and group conferences with students, staff and community resource agencies.

The curriculum specialist will asses individual curriculum needs with the project personnel. She will collect and evaluate the curriculum relevant to the project student population. She will adapt and design the curriculum to meet tj the needs of the children in the Mini-Schools. She will keep up to date with the bilingual materialsbeing produced and will establish a bilingual resource center. She will coordinate the input, involvement and activities in the project. She will also train parents in the development of cultural material so as to foster the direct involvement

of the parents of the children i n the project.

Each Mini-S-hool will concentrate on one specific area of the project aside from providing instruction to the children, so as to provide a service to the other mini-schools. In this way, all of the Mini-schools will be very closely inter-related. For example, one school will provide the teacher training resources, another the curriculum resource center, another, the parent involvement direction, and the other the Guidance services.

A. Language Arts Activities(Listening, Speaking, and Writing). Grades 1 - 6

Language arts curriculum will be concerned with the communication of ideas through activities interralating listening, speaking, reading and writing in the students mother tongue. In the observing listening activities children discrimination through:

1. Observing and listening
    a. Focusing attention on speaker through storytelling, giving directions, etc.
    b. Viewing films, filmstrips, watching Television, listening to the radio, and reporting what was seen or heard.
2. Expressing ideas orally.
3. Oral Reading

    Through the reading of poems, passage selections and stories the children will read conveying mood and feeling using voice with attention to volume, stress, pitch, pulse, rate, pronunciation and phrasing.
4. Reading Multi Ethnic Literature

    The children will read for comprehension enjoyment and information, folktales, fairy tales, fables, myth, animal, realistic and imaginative stories, biographies, rhymes and poems.
5. Expressing ideas in writing

    a) composing stories, reports, outlines, letters, verse, etc. using the appropiate grammar rules for each specific activity.

    1. creative writing

    a. organizing ideas for oral presentation from books, newpapers, stories, etc.
    b. participation in dramas and assembly programs
    c. reciting poems, singing songs

Reading

A. Word Power

Recognition of words by sight context, phonics, and structural analysis.

B. Comprehension Skills

The children will learn to find the main idea from stories, poems, etc.
They will learn to skim through stories, poems, etc. to find details important to the main idea.

The students will use the table of contents, glossary, index.
The cildren will write stories about events experienced by them, write reports from news and other items of interest to them, write

compositions about their family,;friends, pets. trips, vacations, etc. They will create poems. They will improve their handwriting through practice exercises.

Enrichment Activities

1. Assemby programs in which the children participate reciting their poems and reading their stories, singing songs in their dominant language.
2. creative writing about special holidays.
3. spelling bees
4. simple simon
5. anograms
6. reading instructions on games and assembling instruments.
7. use of tapes and recording instruments
8. listen to records in the childrens' dominant language.

B. English as a Second Language (Spanish Dominant Children). Grades 1 - 6.

English as a Second Language will be taught in various levels to allow for individual differences. The activities will be divided into oral activities, reading activities and writing activities.

1. Oral Activities

In the listening/speaking activities the pupils will learn the related skills by listening and imitating the teacher, association of vocabulary and objects, and participating in dialogues. The skills will be reingorced by the use of pictures, slide, films, language, laboratories, tapes, records, radio and television. The students will learn the basic patterns of sound and structure for connunication purposes.

2. Reading Activities

The pupils will be able to practice the audio/lingual skills through reordering the material and patterns learned in the oral activities. They will practice reading labels, caption:directions, calendars, etc. Simple completion drills will be provided by the teacher. The pupils will have the opportunity to play games, sing songs and read stories related to cultural heritage of the second language.

C. Spanish as a Second Language (English Dominant Children) Grades 1 - 6.

The students will develop language skills and cultural appreciation through the following.

1. Understanding and Speaking.

The children will listen to and imitate the model voice. The teacher will provide vocabulary building exercises. She will give commands by actions and words and the children will carry them out. After following the pattern established by the teacher, the activity can be carried out among students. The teacher will present drill exercoses to reinforce the material presented. The children will learn simple grammatical and structures by imitation and repetition of basic patterns. The children will participate in simple dialogue where,1) they will introduce each other 2) order food in a restaurant 3) go to the post office 4) buy articles of clothing or food 5) talk about objects and colors, 6) talk about every day's task, 7) talk about their families, friends, pets, vacations, holidays, etc.

2. Reading

The children will learn to read the vocabulary and patterns practiced orally. They will read labels,

captions and simple instructions. They will read materials according to their grade level.

3. Writing

The children will copy materials learned previously in the oral and reading activities, observing the grammatical rules. The teacher will dictate materials, words, etc. that they will copy from dictation.

4. Enrichment Activities

The children will learn stories, poems, songs, in the second language. He will learn about the cultural heritage. Children will collect and display pictures posters, coins, stamps, books, magazines, calendars, menus, etc. They will take imaginary trips to Hispanic contries. There will be map work to locate the Hispanice countries.

D. Social Studies

The Social Studies program will emphasize pupil experiences through classroom, school, and community activities. Pupils will take trips, will use books, maps, globes, pictures, audio-visual materials, documents, case studies, artifacts, realia, and historical accounts. Experiences such as these help pupils develop concepts relating to man's activities in a school, community, national and world setting. The content for each grade will consist of the following topics.

1. His school and home environment.
2. Living and working together
3. Living and working together.
4. Cultures around the world, cultural, geographical relationships. Emphasis will he given to Puerto Rican, and other Hispanic cultures and Afro-American cultures.
5. American people and leaders.

Social Studies will be taught in the student's dominant language. Panel discussions, newspaper readings, map readings, guest speakers on related subjects and others are some of the activities that will be carried out in the class. The activities mentioned aboced will be adapted to the students needs and grade lebel.

Emphasis in Social Studies will also be placed on developing an awareness und an understanding of life in N.Y.C. and the Metropolitan area. Frequent field trips will be utilized to vitalize instruction, to familiarize pupils with various parts of the immediate community and the N.Y. C. to develop real life experiences useful in language development.

The Social Studies will be geared toward individualize instruction. The pupils will work in their own projects. They will work in groups or areas chosen by themselves.

E. Mathematics grades 1 -6.

The program will follow the existing curriculum in Math from the 1st to the 6th grade which includes:

1. Sets, numbers, numeration.
2. Addition, subtraction, multiplication and division of whole numbers.
3. Fractional parts and fractional numbers.
4. Geometric concepts and geometry.
5. Measurement.
6. Algebraic concepts and problem solving.
7. Caharts, graphs, probability, statistics.

On entering the progran the children will be given a pre-test. (Metropolitan Achievement Test). On the basis of the diagnosis made from these tests: pupils will be grouped within the class according to their particular needs or problèms in Math. Ongoing diagnosis should occur and pupil placement withing groups will be revised as needed.

Children will be assigned materials which match their needs, and work with sub-groups of peers who have similar needs. The Math class will be conducted in the student's dominant language. There will be 45 minutes allotted everyday for Math. The organization of the classroom and displays should facilitate the learning of Math.

A MODEL FOR THE IMPLEMENTATION OF AN ELEMENTARY BILINGUAL SCHOOL

This model is a revised edition of the original model of 1968 for Public School 25X. The feedback from teachers and supervisors of the school indicated a need for change in time elements for language instruction.

The Theoretical Model

A child entering the Bilingual School, P. S. 25 in the kindergarten grade and remaining in the school until graduation from the sixth grade will have experienced seven years of bilingual instruction and is expected at the end of this time to have developed sufficient proficiency in each language to be able to receive 50% of his instruction in English and 50% in Spanish. In order to achieve this proportion of native and second language instruction without subjecting the student to undue stress in functioning in a second language, it is necessary to gradually increase the percentage of second language instruction through the grades. The proposed ratios of native language instruction to second language instruction are indicated below.

Ratio of Percentage of Time Devoted to Native Language Instruction (N) and Second Language Instruction (S) in each Grade.

Grade	N/S Ratio
Kindergarten	85/15
First	75/25
Second	75/25
Third	70/30
Fourth	60/40
Fifth	60/40
Sixth	50/50

Depending on the nature of the classes with regard to language dominance patterns, the language utilized for each of the curriculum areas will vary from English to Spanish. Pupils will be screened and placed into classes according to their individual language dominance so that each class will be designated as being either Spanish Dominant (SD) or English Dominant (ED). The instructional pattern for the two groups will be as indicated in the tables following.

Kindergarten	Spanish Dominant	English Dominant
Language Arts	25min/Sp-20min/ESL	25min/Eng-20min/SSL
Social Studies	15min/Sp	15min/Eng
Science	15min/Sp	15min/Eng
Mathematics	15min/Sp	15min/Eng
Music	15min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
Health Education	30min/Sp	30min/Eng
NS Ratio 85/15	130min/Sp-20min/Eng	130min/Eng-20min/Sp

First Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/Sp
Social Studies	30min/Sp	30min/Eng
Science	30min/Sp	30min/Eng
Mathematics	30min/Eng	30min/Sp
Music	30min/Sp	30min/Eng
Art	30min/Sp	30min/Eng
Health Education	60min/Sp	60min/Eng
NS Ratio 75/25	225min/Sp-75min/Eng	225min/Eng-75min/Sp

Second Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/Sp
Social Studies	30min/Sp	30min/Eng
Science	30min/Sp	30min/Eng
Mathematics	30min/Eng	30min/Sp
Music	30min/Sp	30min/Eng
Art	30min/Sp	30min/Eng
Health Education	60min/Sp	60min/Eng
NS Ratio 75/25	225min/Sp-75min/Eng	225min/Eng-75min/Sp

Third Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/Sp
Social Studies	30min/Sp	30min/Eng
Science	30min/Sp	30min/Eng
Mathematics	45min/Eng	45min/Sp
Music	30min/Sp	30min/Eng
Art	30min/Sp	30min/Eng
Health Education	45min/Sp	45min/Eng
NS Ratio 70/30	210min/Sp-90min/Eng	210min/Eng-90min/Sp

Fourth Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/Sp
Social Studies	60min/Sp	60min/Eng
Science	15min/Sp-30min/Eng	30min/Sp-15min/Eng
Mathematics	45min/Eng	45min/Sp
Music	15min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
Health Education	30min/Sp	30min/Eng
NS Ratio 60/40	180min/Sp-120min/Eng	180min/Eng-120min /Sp

Fifth Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/Sp
Social Studies	60min/Sp	60min/Eng
Science	30min/Eng-15min/Sp	30min/Sp-15min/Eng
Mathematics	45min/Eng	45min/Sp
Music	15min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
Health Education	30min/Sp	30min/Eng
NS Ratio 60/40	180min/Sp-120min/Eng	180min/Eng-120min/Sp

Sixth Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/S
Social Studies	45min/Sp-15min/Eng	45min/Eng-15min/S
Science	45min/Eng	45min/Sp
Mathematics	45min/Eng	45min/Sp
Music	15min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
Health Education	30min/Sp	30min/Eng
NS Ratio 50/50	150min/Sp-150min/Eng	150min/Eng-150/Sp

The total amount of time allotted for each curriculum area is in accordance with the standard New York City Board of Education recommendations.

Grades K - 3	
Language Arts	30%
Social Studies	10%
Science	10%
Mathematics	10%
Music	10%
Art	10%
Health Education	20%

Grades 4 - 6	
Language Arts	30%
Social Studies	20%
Science	15%
Mathematics	15%
Music	5%
Art	5%
Health Education	10%

The Actual Model

Because the Bilingual School is only now beginning its fourth school year, the theoretical model cannot be implemented on all grade levels from Kindergarten through sixth. The theoretical model which can be implemented through the third grade must be adjusted to adequately service the children at the different levels and at the same time provide exposure to a second language. In short, a child entering the 5th grade this September should not be expected to undertake 40% of his learning in a second language if he has not had any previous exposure to it. Therefore, in the case of an English Dominant child the E/S ratio would be limited to 85/15 rather than to the 60/40 prescribed in the theoretical model. However, in the case of a Spanish Dominant 5th grade child, we must take into account the fact that he has already experienced 5 to 6 years of instruction in English and can therefore, be expected to undertake a large percentage of instructional time in English than the English Dominant child can in Spanish. Thus the actual model suggests an ES ratio of 70/30 for the incoming Spanish Dominant student.

COMPARISON OF THEORETICAL NS RATIOS WITH ACTUAL NS RATIOS FOR CLASSES STARTING IN SEPT. 1968 AND CONTINUING THROUGH SIXTH GRADE

1968			1969			1970			1971			1972			1973			1974		
T	EDA	SDA	T	EDA	SDA	T	EDA	SDA	T	EDA	SDA	T	EDA	SDA	T	EDA	SDA	T	EDA	SDA
85/15	95/5	95/5	85/15	85/15	85/15	85/15	85/15	85/15	80/20	80/20	80/20	70/30	70/30	70/30	60/40	60/40	60/40	50/50	50/50	50/50
75/25	85/15	85/15	85/15	85/15	85/15	80/20	80/20	80/20	70/30	70/30	70/30	60/40	60/40	60/40	50/50	50/50	50/50			
75/25	85/15	85/15	80/20	85/15	80/20	70/30	80/20	70/30	60/40	70/30	50/50	50/50	60/40	50/50						
70/30	85/15	80/20	60/40	85/15	70/30	50/50	80/20	60/40												
60/40	85/15	70/30	50/50	85/15	60/40															
50/50	85/15	60/40																		

The following table indicates a comparison of the theoretical model NS ratio with the NS ratios of the actual model for English Dominant classes and Spanish Dominant classes. The figures are projected through the sixth grade for each of the present grades to demonstrate the anticipated degree of bilingualism for all classes starting in the Bilingual School in September, 1968.

Based on the NS ratios of the actual model, the instructional pattern for classes starting in the Bilingual School in September, 1971 is outlined in the following tables.

Kindergarten	Spanish Dominant	English Dominant
Language Arts	25min/Sp-20min/ESL	25min/Eng-20min/SSL
Social Studies	15min/Sp	15min/Eng
Science	15min/Sp	15min/Eng
Mathematics	15min/Sp	15min/Eng
Music	15min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
ealth Education	30min/Sp	30min/Eng
	NS Ratio - $\frac{85}{15}$	NS Ratio - $\frac{85}{15}$
	130min/Sp-20min/Eng	130min/Eng-20min/Sp

irst Grade	Spanish Dominant	English Dominant
nguage Arts	45min/Sp-45min/ESL	45min/Eng-45min/SSL
ocial Studies	30min/Sp	30min/Eng
cience	30min/Sp	30min/Eng
athematics	30min/Eng	30min/Sp
usic	30min/Sp	30min/Eng
rt	30min/Sp	30min/Eng
ealth Education	60min/Sp	60min/Eng
	NS Ratio - $\frac{75}{25}$	NS Ratio - $\frac{75}{25}$
	225min/Sp-75min/Eng	225min/Eng-75min/Sp

Second Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/ESL	45min/Eng-45min/SSL
Social Studies	30min/Sp	30min/Eng
Science	30min/Sp	30min/Eng
Mathematics	30min/Eng	30min/Sp
Music	30min/Sp	30min/Eng
Art	30min/Sp	30min/Eng
Health Education	60min/Sp	60min/Eng
	NS Ratio - $\frac{75}{25}$	NS Ratio - $\frac{75}{25}$
	225min/Sp-75min/Eng	225min/Eng-75min/Sp

Third Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/ESL	45min/Eng-45min/SSL
Social Studies	30min/Sp	30min/Eng
Science	30min/Sp	30min/Eng
Mathematics	45min/Eng	45min/Sp
Music	30min/Sp	30min/Eng
Art	30min/Sp	30min/Eng
Health Education	45min/Sp	45min/Eng
	NS Ratio - $\frac{70}{30}$	NS Ratio - $\frac{70}{30}$
	210min/Sp-90min/Eng	210min/Eng-90min/Sp

Fourth Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/ESL	45min/Eng-45min/SSL
Social Studies	60min/Sp	60min/Eng
Science	45min/Sp	45min/Eng
Mathematics	15min/Sp-30min/Eng	30min/Eng-15min/Sp
Music	15min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
Health Education	30min/Sp	30min/Eng
	NS Ratio - $\frac{75}{25}$	NS Ratio - $\frac{80}{20}$
	225min/Sp-75min/Eng	240min/Eng-60min/Sp

Fifth Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/SSL
Social Studies	60min/Sp	60min/Eng
Science	45min/Sp	45min/Eng
Mathematics	45min/Eng	30min/Eng-15min/Sp
Music	15/min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
Health Education	30min/Sp	30min/Eng
	NS Ratio - $\frac{70}{30}$	NS Ratio - $\frac{80}{20}$
	210min/Sp-90min/Eng	240min/Eng-60min/Sp

Sixth Grade	Spanish Dominant	English Dominant
Language Arts	45min/Sp-45min/Eng	45min/Eng-45min/SSL
Social Studies	60min/Sp	60min/Eng
Science	45min/Sp	45min/Eng
Mathematics	45min/Eng	30min/Eng-15min/Sp
Music	15min/Sp	15min/Eng
Art	15min/Sp	15min/Eng
Health Education	30min/Sp	30min/Eng
	NS Ratio - $\frac{70}{30}$	NS - Ratio $\frac{80}{20}$
	210min/Sp-90min/Eng	240min/Eng-60min/Sp

A MODEL FOR A - BILINGUAL PROGRAM WITHIN AN ELEMENTARY SCHOOL

It is not always possible to develop complete bilingual schools. However, bilingual programs within non-bilingual schools can easily be implemented.

District 13 in Brooklyn is currently operating a Title VII Bilingual Program in two of its elementary schools. Approximately 33% of the district's 15,000 pupils are rated ESL learners. Due to financial limitations, however, District 13 has been unable to set aside one entire school as the District Bilingual School. The District has, therefore, organized its Bilingual Program in P.S. 133 and P. S. 282, the two schools with the largest number of ESL students in the District. The Title VII District 13 Bilingual Program operates on a model similar to that of the Bilingual School in the Bronx. The Brooklyn program began operation in September, 1970, with two kindergarten and first grade classes in each of the two models. The children were divided into classes according to their language dominance. Presently, in the second year of operation, two classes have been added to each school, and the program will continue to expand at the rate of one grade per year through the fifth grade. When expansion is completed, the program

will have, at each school, 12 classes — one English dominant and one Spanish dominant of each grade from K to Five.

The following section outlines the organization of this type of program:

First Year

Kindergarten - two bilingual classes. One English dominant and one Spanish dominant.

Grade 1 two bilingual classes. One English dominant and one Spanish dominant.

Second-Fifth Year - two classes are added each year. The classes should be mixed for instruction after the third year.

Personnel

a) one bilingual classroom teacher for each class.
b) one ESL/SSL teacher for every four classes.
c) one guidance counselor.
d) one teacher trainer.
e) one project director.
f) one family worker.
g) one educational assistant for each class.

Language for Instruction

In kindergarten the children are taught all subjects in their dominant language and at the same time receive instruction in their second language (English or Spanish) for one period a day.

In Grade 1, the second language will continue to be taught. The children are also to be linguistically mixed for instruction in mathematics. Each subsequent year, a greater amount of time in formal instruction should be given in the second language until the children are able to function equally well in either language.

BILINGUAL PROGRAM WITHIN A JUNIOR HIGH SCHOOL

Despite the complex programming of the intermediate or junior high schools, these schools provide an excellent atmosphere for a non-graded bilingual program. The fact that such a program must be non-graded is of utmost importance since it would provide a great deal of flexibility for its students. In addition, each subject area must be programmed at the same time (parallel programming) in order to allow mobility. This model is based on the Bilingual Mini-School in District 4 Manhattan.

Even though age and reading scores remain key factors in each student's acceptance and placement in a high school program, the student should be programmed according to ability and educational background in each subject area in the junior high school. Therefore, regardless of age, class placement is made on ability. A student may be in one level for English and on a totally different level for math or science. With parallel programming, a student would be allowed to move from one subject area class to another as soon as he is able. Students would no longer be held back because of English language difficulty. Educational progress could result in immediate change from one level to another in each subject area, without affecting the student's participation in other subject areas.

There are two types of science programs which should easily be integrated into a non-graded intermediate bilingual program. The first is a traditional science program, where the teacher discusses, the student reads and there is room for occasional experiments. The second is based solely on experimentation. Each unit revolves on a particular experiment. Conclusions are elicited from the class on the basis of the experiment carried out. In this second type of science class, the student is more actively involved in the learning process. Again, the dominant language of the student would be employed. There would also be special supplementary courses such as typing, special language and math labs, music and industrial shops. Every bilingual program should employ one bilingual guidance counselor. Spanish and English reading tests should be used. The teachers employed within the program should be functionally bilingual.

The most important factor in the development of this bilingual program is the direct involvement of parents in the program. Parents should be encouraged to attend academic vocational workshops and community services. They should also participate directly in the development of all cultural material related to the formal education of the Puerto Rican child.

English language arts, English as a second language, Spanish language arts and Spanish as a second language would be taught according to the individual student's language background. Special emphasis would be given to the continued development of the child's native language, with special consideration given to the teaching of the second language.

Program Models

The same departmentalization program should exist in social studies. However, the basis of the course content would be an activity-centered urban curriculum, instead of concentrating on a lecture type course where students memorize dry facts. This urban cirriculum would teach students the problems inherent in living in an urban area. They would investigage, study, form committees, make recommendations, and try to implement them. The students' dominant language would be employed in this course.

The Bicultural aspect of the program would be an intrinsic part of each subject area as well as a course of study in and of itself.

Program Models

Personnel	Cost
Five teachers (per each 100 students) @ $15,000	$ 75,000
One Guidance Counselor	15,000
One Director or Chairman or Assistant Principal	20,000
Part-time help, psychologist, nurse, etc.	20,000
Total	$130,000
Materials and Equipment	20,000
Minimum total for each program	$150,000

A MODEL FOR A SPECIAL SUBSCHOOL WITHIN A HIGH SCHOOL

Prior to the presentation of possible programs models, we must reiterate the plea to consider each student as an invaluable and irreplaceable human being. The remediation of the damage perpetrated on our students and the prevention of future harm to our younger generation, necessitates the removal of all impediments. Budgetary and space considerations can no longer be used as excuses to justify the brutal annihilation of our youngsters' aspirations.

In view of this, we feel that all future programs to be funded should be consistent with the following principle:

All Programs Should

1. develop a sense of identity and belonging in all students.
2. use the resources of the community in expanding learning experiences.
3. assure students of the full development of their form educational potential by providing them with all the basic skills, in addition to all other academic subject areas.
4. include innovative and stimulating methods and materials that will deal with relevant aspects of a student's life.

Consequently, all programs should include a bilingual bicultural component, in addition to developing basic skills in reading, mathematics and the English language.

One of the ways of achieving some of the above, would be to divide large urban high schools into mini or sub-schools, each with a specialization relevant to the lives and needs of our students. This idea has recently been highlighted in educational circles. We feel that some of its features will be most beneficial for the Spanish-speakin child who generally experiences a close and warm family relationship.

General Overview and Characteristics of Sub-schools

1. Each sub or mini-school would involve a maximum of 200 students.
2. Each sub-school would be administered autonomously by a director. A board of administrators, comprised of the directors of the various sub-schools, would be responsible for functional matters that of necessity will have to remain centralized.
3. The student teacher ratio should be 20 to 1.
4. Interdisciplinary teacher teams would be responsible for all instruction.
5. The guidance counselor/student ratio should be one counselor for every fifty students.

6. All counselors should be bilingual and some should be bicultural.
7. Guidance counselor interns should be recruited from the community. They can be either university students or paraprofessionals in a career ladder program. In some cases, recruits may be chosen from the professional staff of the sub-school.

Why Sub-schools?

The huge registers of the large urban city high school tend to aggravate the sense of alienation felt by today's youth, consequently fostering more dropouts. The sub-school because of its reduced size, would evolve into family-type teacher-student relationships. Thus, the staff would be made aware of the individuality and humanity of each student and would also learn about and understand their varying ethnic backgrounds.

Proposed Model

Sub-school - The School of Urban Affairs

(Goals:)

1. To foster student identification with the immediate community.
2. To foster staff understanding of the community it serves.

3. To develop a progression of the concept community to involve the immediate area in relation to the city, state, the nation and the world.
4. To establish direct and meaningful liaison with colleges and universities in or near the immediate community.

Objectives:

1. There will ba a growth in the student's sense of self-worth.
2. Failure in school will be reduced as the relevancy of courses opens new vistas for student involvement.
3. The drop-out rate will be reduced.
4. Aspirational levels will be raised.
5. Leadership potentials will be developed.

Program Activities

A. Student Activities
   - a). 200 students will participate in the program.
   - b) students will define through "Rap sessions" with the professional staff as much of the curriculum as feasible.
   - c) an integral part of the program will be "community internships" where students will receive school credit for working within community agencies, e.g., the Police Department, The Human Resource Administration, Community Hospitals.
   - d) Ethnic studies in Puerto Rican history and culture will be part of the program.
   - e) Students will vote to choose student members of the sub-schools advisory board.

B. Staff Activities
   - a) A director in charge of the overall administration and supervision of the sub-school.
   - b) An assistant director in charge of community interaction.
   - c) Ten teachers will form interdisciplinary teams who will adapt and/or develop materials for use in new topical units as they are developed for the various courses. Attendance at in-service institutes as well as at monthly parental meeting will be required.
   - d) Three guidance counselors to handle all referrals teachers or students make.. Counselors will conduct parental interviews and supervise guidance counselor interns.
   - e) Six guidance counselor interns to assist in the work of the guidance counselor and in some cases, handle individual cases themselves.

f) One administrative secretary for executive director.

g) One secretary intern responsible to the assistant director.

h) Ten educational assistants, one for each teacher in the program.

i) A doctor and a nurse whose services will be available to the sub-school for at least one day a week.

The Concept of the Sub-School Should Obviate the Need for School Guards

Certain services such as those provided by the dietician, luch room aides, payroll secretaries, switchboard operators and custodian will remain centralized.

The basic outline provided for this model could be varied to serve the special needs of various types of students, e.g., the student for whom English is a second language, the student needing basic skills such as reading.

Adaptation of the various bilingual/bicultural projects previously presented also merit consideration. Some aspects of these programs can be adapted to the need of the high school student.

THE FOLLOWING IS A MODEL OF A DISTRICT WIDE PLAN DESIGNED TO PROVIDE TWO BILINGUAL CLASSES IN EACH OF THE DISTRICTS 25 SCHOOLS.

THE STATED OBJECTIVES OF THE PLAN IS TO INCREASE THE STUDENTS' ACHIEVEMENT LEVELS IN SPEAKING, UNDERSTANDING, READING AND WRITING ENGLISH, IN READING SPANISH, AND IN HISPANIC HISTORY AND CULTURE.

Classes will be non-graded if the needs of the students can best be met by this organizational pattern. This decision will be made by the individual schools. The maximum number of students per class will be 25. This will be made possible by this proposal. The monolingual Spanish-speaking student participating in this program will learn English as a second language. The oral-aural method will be used for a minimum of ninety minutes per day. Instruction in other curriculum areas will be taught in Spanish including language arts. The students will be diagnosed to determine their language and reading ability in Spanish. The curriculum and materials will be adapted to the students' instructional level. As the students' proficiency in English increases, the use of English as the language of instruction in other curriculum areas will be increased. In general activities will be geared to individualization of instruction. Diagnostic-prescriptive procedures will be used to the extent possible.

Puerto Rican and Hispanic history and culture will be integrated into the total curriculum. Emphasis will be placed on the influences of other cultures in Puerto Rico, highlights of Puerto Rican history, contributions of Hispanic Culture to American Culture, arts, crafts and customs.

The basic curriculum subjects areas will be departmentalized along the established intermediate and junior high school pattern. Students in the bilingual class will

meet the general school population in such classes as Music, Art, and Physical Education.

Staff

The following staff will be required to implement these activities:

50 bilingual-bicultural classroom teachers, (25 of whom will be paid by tax-levy funds) full time annual.

50 bilingual-bicultural education assistants or teacher aides, 233 days, 5 hrs./day.

Teachers

The teachers will be responsible for planning and implementing of all classroom activities. They will be assisted in all phases by the educational assistant or teacher aide.

Bilingual Bicultural Curriculum Resource Teachers

In order to assist the staff in the effective implementation of an individualized bilingual-bicultural program, schools will be assigned a bilingual-bicultural curriculum resource teacher. He or she will form part of the school team implementing this program.

The resource teacher's duties will include:

1. Assisting other staff members in developing and adapting of materials for classroom use in all curriculum areas.

2. Assisting classroom teachers in diagnosis and prescription of students.

3. Organizing parent workshop in cooperation with school staff. (See parental involvement section).

4. Assisting teachers in evaluating progress of students.

5. Arranging for weekly workshop sessions with bilingual classroom teachers and educational assistants for the purpose of cooperatively improving instructional skills.

6. Providing and developing with other classroom teachers who teach Spanish-speaking children TESL and SLES materials. Providing training to these teachers in TESL and SLES as needed.

7. Organizing special activities involving the bilingual classes and English dominant classes in order to foster integration of the two groups and provide additional opportunities in the development of English skills.

The Bilingual-Bicultural Guidance Counselors

In order to provide adequate supportive services for the students participating in this program, 8 bilingual-bicultural guidance counselors will be assigned on an itinerant basis. Each counselor will service the students in 3 or 4 schools. Their duties will include:

1. Individual and family group consultation to help resolve problems which may be affecting the student's academic achievement.

2. Group counseling with emphasis on educational and vocational information.

3. Conduct workshops and/or hold individual or group conferences with school staff in order to provide adequate interpretation of the Spanish-speaking children's behavior as it is affected by his cultural background.

4. Assist in conducting parent workshops (see section on parental involvement).

5. Coordinate efforts of all resources available within the school and the community in order to secure the necessary assistance for the children and their families to deal with problems which affects academic achievement.

6. Meet regularly with the program classroom teacher and resource teacher to evaluate progress of students and coordinate classroom and guidance efforts.

The counselors will be assigned on a full-time annual basis.

Materials and Equipment Needed

Textbooks (Spanish and English)
Workshops
Classroom Supplies
Paperbacks for Training
Testing Supplies
Clerical Supplies
Cassette Tape Recorders
Audio-Visual Supplies
Selectric Typewriter
Typewriter Table and Chair

Materials already developed in ongoing bilingual programs will be used. Curriculum developed in the District

Bicultural Education Program (funded by State Urban Funds) will be the basis of the history and culture activities.

In-Service Staff Training

Dates: Week prior to start of program

Time Schedule: 9:00 a.m. - 3:00 p.m. (5 hrs./day)

Participants:

50 Classroom bilingual teachers
18 bilingual resource teachers
50 bilingual educational assistants
7 bilingual guidance counselors

Content:

1. Orientation to objectives and philosophy of ESAA.
2. Philosophy and implementation of bilingual/bicultural programs.
3. Philosophy and implementation of individualized instruction.
4. Diagnostic and prescriptive techniques.
5. Management of individualized instructional system.
6. Effective use of paraprofessionals.
7. Procedures for evaluating student progress.
8. Introduction to procedures for evaluating programs.
9. Overview of Puerto Rican and Hispanic history and culture and its integration into the curriculum.
10. Effective coordination of classroom activities and supportive guidance services.

Format: Lectures and Workshops

Teacher-in-Charge will plan, organize and supervise training.

Teacher trainers will conduct workshops. Professionals and paraprofessional staff will be trained together. Consultants knowledgeable in content areas will assist with training its evaluation. Some materials will be developed in the workshop sessions.

In-Service

All training will be conducted during the school day. Bilingual-Bicultural resource teachers will meet on a monthly basis with the District Supervisor of Bilingual Programs. At each school, the Bilingual Bicultural classroom teachers, Bilingual-Bicultural educational assistants, and Bilingual-Bicultural resource teachers will meet weekly for workshop (see job description of bilingual resource teacher). The Bilingual-Bicultural Guidance Counselors will also participate in the weekly workshops, as well as receive orientation and training fromthe District Administration of Pupil Personnel Services.

The content of the training sessions will include a continuation of those topics introduced during the resource teacher training, an evaluation of the on-going program, and the development of additional skills needed to improve the effectiveness of all activities.

Parental Involvement

Monthly workshop will be held in each school for the parents of the target population. These workshops will be organized by the resource teacher in cooperation with the bilingual-bicultural guidance counselors and other school staff.

Workshops topic will include:

1. Orientation to the object and philosophies of ESAA.
2. Need for and benefit of bilingual-bicultural education.
3. Materials used in the program.
4. Parent participation in curriculum development.
5. Parent skills needed to assist their children with their academic work.

Parents will be encouraged to visit the classrooms, work closely with the teacher and assist in evaluating the program.

PROPOSAL FOR A BILINGUAL EDUCATIONAL PROGRAM AT THE HIGH SCHOOL LEVEL

VII

I The Rationale for a Bilingual Education Mini School for Morris High School

This proposal for an innovative alternative high school program is planned for 250 Morris High School Spanish-dominant students who are learning English. The Bilingual Education Mini School would provide an alternative educational program that would facilitate the completion of a high school education by our non-English dominant students.

Recent statistics indicate that 52.9% of all Puerto Rican high school students drop out between the 10th and 11th grade. Research and the evaluation of existing bilingual programs throughout our nation serve to reinforce the feeling of leaders of the Hispanic community that bilingual education programs help to improve the education of our non-English students. Through these programs they are able to meet with success.

One of the most important goals of a bilingual education is to provide a total education program that would make it possible for a greater number of non-English dominant students to complete a high school education. It is also expected that they can finish their education at an age that is comparable to that of their English speaking peers.

Most of the non-English students cannot function in major academic classes while they strive to learn the necessary English skills to meet with academic success. As a result, many of them graduate a year or two later than their English

speaking peers. This retardation not only hinders their academic growth but may also cause irreparable damage to their emotional well-being as well as their self-image. Few receive a New York State Regents Diploma because they are not able to pass Regents state-wide examinations in academic subjects, since they are conducted in English.

Another important aspect of bilingual education is biculturalism. By taking courses in Latin American history, culture and literature, the students will develop a pride in their cultural heritage. These courses will also help to raise their self-image.

II Needs Assessment

Morris High School has a Hispanic population of 56%. In September, 1972, the Bilingual education department was formed to improve the educational prospects of 250 Spanish dominant students in the school. Although some courses are offered in Spanish, it is a very limited program and does not meet the needs of these students.

Presently, courses in English as a second language are offered in addition to three Spanish Science classes, five classes Spanish mathematics, a Spanish language class and five Spanish Social Studies classes. There are eleven teachers assigned to the Bilingual Education Department. Four teachers are funded through a New York State Urban Education Project while the rest are funded through City tax-levy monies.

This proposal grew out of the need to improve the instruction of our Spanish dominant youngsters.

III The Instructional Program

A. English as a Second Language

As stated in the Fleischman Commission Report, any bilingual program should include a strong component of specialized English instruction. Most authorities in the field of English as a Second Language agree that it takes a student from one to two years to reach a level of competency which would enable him to function in English language subject classes. The ESL Component will offer our Spanish dominant students a two and one-half year program. ESL methodology with an emphasis on audio-lingual techniques will be used to teach the English skills. Ample practice will also be given in speech improvement work. The first two years of ESL instruction will be divided into individual terms of double period classes. The program will be divided into terms to facilitate the advancement of the students who can learn English in less than two years.

The fifth term ESL class will stress intensive reading and writing instruction.

Students will be given written and oral tests to determine their level of English. They will be placed in their proper level regardless of their grade. Thus a student who comes with enough credits to be in the eleventh grade, may be placed in an ESL I class if his knowledge of English is minimal.

B. Mathematics in Spanish

1. Students will take courses in mathematics according to their level of ability. They will not be given courses that they have already received credit for.
2. Students can take:
   a. Remedial Mathematics 1
   b. General Mathematics 1 & 2
   c. Algebra 1 & 2
   d. Geometry 1 & 2

   (We hope to have a flexible program so that if we have enough students for a more advanced mathematics class, it will be made available).
3. The material covered in these courses will follow New York City curriculum guidelines.
4. Evaluation - Teacher made tests will be given frequently in order to monitor student achievement. Spanish versions of the Uniform Examinations will be given to students. Comparison will be made with the results of the same test administered in English to students in the main stream, so as to assess the achievement of the students in the bilingual program. The Chairman of the Department of Mathematics will also be consulted. Students will also take the appropriate Mathematics Regents examinations that are available in Spanish.

C. History in Spanish

1. Courses
   a. First term - Latin American Studies I will cover Pre-Columbian History, literature and culture.
   b. Second term - Latin American Studies II will cover Post-Columbian History, literature and culture with emphasis on Puerto Rico, Santo Domingo, Cuba, Ecuador and Honduras.
   c. Third term - Western Civilization I will be

be conducted as a reading class in English. We are in the process of looking for appropriate materials.

d. Fourth term - Eastern Civilization I will also be conducted as a reading class in English.

2. Teachers will develop model lessons for each course. Courses of study will also be written. The Social Studies chairman as well as other agencies will be consulted to acquire existing relevant materials. Teacher made tests will be given frequently in order to measure student success. Uniform examinations will also be administered.

D. Science in Spanish

1. Courses

   a. General Science 1
   b. General Science 2
   c. Biology 1
   d. Biology 2
   e. Chemistry 1
   f. Chemistry 2

2. Courses of study will be developed for each area. The New York City curriculum guidelines will be followed for each course. Teacher made tests will be given frequently. Spanish versions of the Uniform examinations will be given. The Science Chairman will be consulted.

E. Spanish

1. Courses

   a. Spanish Language Arts - for incoming students. Emphasis is on Spanish language skills and literature. Orientation to school plan and community will also be discussed.

   b. Students can take Spanish courses that are designed for native Spanish speakers. These courses are given by the Foreign Language Dept. We are going to suggest courses in the literature and cultures of Latin America and the Caribbean. The Chairman of the Foreign Language Dept. will be consulted. Students will take uniform examinations and teacher-made tests. They will also take the appropriate Spanish Regents examinations.

IV Goals of the Program

Given an effective bilingual education program, the following are long range goals that can be reasonably expected:

A. Non-English dominant pupils will develop a positive self-image and feel pride in their cultural heritage.

B. Non-English dominant pupils will have a literate command of both their native language and English.

C. As many non-English students as possible will have the necessary skills for entering college.

D. Students who do not plan to attend college will have developed the necesary skills to attain vocational goals.

E. It will be possible for more non-English dominant pupils to complete a high school education.

F. We can begin to establish a bilingual staff knowledgeable about and competent in the philosophy, principles and practices of Bilingual Education so as to assure the maintenance of an effective program.

G. Curriculum will be developed in Puerto Rican and Latin American Studies, Mathematics and in the Sciences.

H. New York City Board of Education curriculum for Mathematics the Sciences will be translated into Spanish.

V. Proposed Daily Schedule for Each Term

First Term

1. ESL1 2 periods
2. ESL1
3. Math in Spanish*
4. Spanish Language Arts - For all entering students in the program emphasis is on Spanish grammar, literature and Hispanic culture-orientation to school and community is also included.
5. Physical Education
6. Lunch
7. History in Spanish*
8. Art 1
9. Tutoring if desired.

*the grade and level of these subjects will depend on the courses that the student has taken in his country and also on his demonstrated ability in the subjects.

Second Term

1. ESL 2 2 periods
2. ESL 2
3. Math (in Spanish)*
4. General Science 1 (in Spanish)*
5. Physical Education
6. Lunch
7. History (in Spanish)*
8. Art 2
9. Tutoring if desired

Third Term

1. ESL
2. ESL
3. Math (in Spanish)*
4. General Science 2 (in Spanish)
5. Physical Education
6. Lunch
7. History (ESL) taught as a reading class
8. Music 1
9. tutoring if desired

Fourth Term

1. ESL 4
2. ESL
3. Math (in Spanish)*
4. Biology 1 (in Spanish)*
5. Physical Education
6. Lunch
7. Hisotry (ESL) taught as a reading class
8. Spanish*
9. Tutoring if desired

Fifth Term

1. ESL 5
2. Regular English Class (level determined by test)

3-8. Biology 2 (in Spanish or in English. The student should be able to function in both languages by now. The student can continue his program depending on the credits that have been approved from his transcript and what other diploma requirements he must fulfill.)

Sixth, Seventh and Eighth Term

The student continues to take courses that he needs to graduate. He should be offered the option to take them either in Spanish or English.

VI **Staff Needs**

2 Mathematics teachers
2 Science teachers
2 Social Studies teachers
2 Spanish teachers
6 E.S.L. teachers
1 grade advisor
1 coordinator
1 family assistant

THE FOLLOWING ARE BRIEF DESCRIPTIONS OF SIX BILINGUAL EDUCATIONAL PROGRAMS OPERATING IN VARIOUS SCHOOL DISTRICTS IN NEW YORK CITY

PROGRAM DESCRIPTION A

Instruction is conducted in Spanish for youngsters who have been classified as Spanish Dominant. This school, in addition to utilizing a bilingual approach to teaching is organized on a nongraded basis, with team planning and team teaching as an additional innovative feature. All instruction in the academic subject areas will be conducted through small groups, and whenever possible an individualized approach is provided. Diagnostic tests, results of teacher prepared tests and teacher recommendations play a significant role in the grouping of children.

The program is developed whereby Spanish speaking children will be able to develop and maintain proficiency in their vernacular while learning English, so that they become functional bilinguals. The design of the program is to develop among children an awareness and an understanding of their rich cultural heritage, to help them develop pride in this heritage, thus contributing to their developing a more positive identification with their culture through their language. For the parents, instruction is provided in the second language. This helps them develop interest and pride in a second language while furnishing their children with the motivation to achieve and to excel and to become bilinguals.

PROGRAM DESCRIPTION B

The Bilingual-Bicultural aspect of this program is coordinated centrally at the District Office to ensure maximum implementation.

The Comprehensive Language program in operation during 1971-72 serviced pupils in Grades 3-9.

ESL Component

This activity will instruct the non-English and Spanish dominant students in the basic skills of listening, speaking, reading and writing for the purpose of attaining automatic control and fluency in the oral and written aspects of English through the use of language laboratory equipment, special learning aids and books that give specific instruction in learning English as a Second Language, and ethnically oriented materials for use in oral pattern practice drills and dictation.

Specifically, these children demonstrate a need for an introduction and remediation in the following areas of language learning:

1. Oral communication skills
2. Auditory discrimination of the English sounds.
3. Word attack and word recognition
4. Comprehensive skills for oral communication and reading

A Summer Bilingual School provides students with the opportunity to continue their schooling for an additional six weeks in July and August. This program was designed to refine previously taught and learn new concepts basic to the elementary school curriculum. Instruction again is first taught in their vernacular and then via ESL techniques reinforced in the second language.

The school was also able to implement an adult language program for parents, as well as for members of the community. The program's goals were to give parents a practical introduction to second language learning,which includes English as a Second Language, Spanish for Beginners and Spanish enrichment for speakers of Spanish.

The Department of Recruitment and Training for Bilingual Teachers of the New York City Board of Education selected this plan as a model of instruction for fifteen Bilingual Professional Assistants. Their presence enabled the school to implement an even more individualized program of instruction.

5. Adequate use of English language structures
6. Strengthening students' control of the rhythm and intonation of the English language.
7. Understanding and usage of vocabulary relationships between English and Spanish such as the recognition and usage of cognates.

Community Involvement

In order to assist the school staff in gaining greater understanding and sensitivity in the orientation and guidance of the non-English speaking child and parent, the development of a two-way communication and rapport between the school and other community persons and organizations affecting the lives of the pupils, will be continued.

This will be done through the services of bilingual teachers, Bilingual Educational Assistants assigned to this program as well as Family Assistants in our Pupil Personnel Services program.

Hispanic Culture

In addition to the provision for English as A Second Language instruction, there is a need to provide these students with an in-depth awareness of the richness and complexity of their Hispanic history and culture for the purpose of building on their confidence and sense of identity and therein enabling them to use these powers to achieve a high level of academic and social excellence and effectiveness.

As the English speaking children and the Hispanic children residing in Community School District 12 constantly relate to one another and share experiences both in and out of the school setting, we recognize the need for each group to know, understand and appreciate the other's background, culture and heritage for the purpose of developing one community that can effectively recognize and act on common needs and aspirations. Accordingly, a bilingual bicultural approach to learning is not only for the Hispanic child, but for the English speaking child as well.

Curriculum Areas in Spanish - Language Arts in Spanish

Spanish-speaking pupils, while learning English as a Second Language and receiving a background in their cultural heritage, still have a need for comprehension and concept development in the other curriculum areas. Therefore, bilingual education will satisfy this need by using the pupils' native tongue to develop concepts and skills in the major subject areas. Bilingual education recognizes the greater importance of the mother tongue, both as a medium of concept development and as a means of building confidence and security in pupils whose English is non-functional. This instruction approach is needed to enable pupils to improve their academic performance in mathematics, science, social studies and all related areas.

Spanish as a Foreign Language

Instruction in Spanish as a Foreign Language for Spanish-speaking students and English-speaking students will also be offered. Often the child who does not speak English does not speak his own language properly. Instructing him in both language preserves his own language and cultural heritage, and at the same time will equip him to live in a Bilingual society. Bi-lingual education will also offer a rare opportunity to the English-speaking child.

He will learn a new language at the time it is easiest to learn and he becomes familiar with a literature and history that is different from his own. Having non-English speaking students in the school becomes an asset to all the pupils. We hope that towards the end of the academic year, many of our students will be able to speak, read, and write in two languages. Since all high schools are now requiring two years of a foreign language in order to meet the requirements of the academic diploma, it is to the

students' advantage to have started two languages in the early stages of their education.

PROGRAM DESCRIPTION C - PROJECT BEST

The project is designed to organize personnel and resources to cope with the linguistic and educational problems of schools serving the highest concentration of Spanish-speaking children. It provides preservice, inservice, and summer bilingual training to teachers and auxiliary personnel through educational programs both on the graduate and under-graduate levels at Lehman College and Hunter College.

A clearing house is also maintained for the collection and dissemination of bilingual curricula, educational materials and evaluative instruments in all subject matters. Other related aspects include the involvement of the community in all phases of the program and the invitation of bilingual bicultural research.

The Project BEST Team Leaders, teachers and paraprofessionals from Lehman College were extremely helpful in the Summer School Program. They administered and served as resources for teachers, paraprofessionals and students.

In order to inform parents, school personnel and community people of the techniques and scope of the bilingual program, an assessment day for District Project BEST participants was held. The following activities were carried out:

1. Demonstration lessons in English and Spanish.

2. Ethnic Cultural Exhibit (compiled by the District 12 Hispanic Heritage Coordinator).
3. Curriculum materials prepared by teachers and paraprofessionals.
4. Work done by students: reports and studies prepared in both languages.
5. Parents' involvement activities, e.g, English classes and Fashion Show.
6. Children's performance reflecting the culture and language of the Hispanic.

PROGRAM DESCRIPTION D

A tandem school which consists of two separate facilities, one for the upper grades and one for the lower grades. The Learning Laboratories for Social Studies is a living museum where children create exhibits related to their Hispanic cultural heritage and their present environment. A bilingual structure is built into the entire fabric of this school.

Inherent in all instruction and learning activities for the parents, students and faculty of the school is a commitment to maintain and deepen the Hispanic awareness and the Spanish language.

District 12's newly built school in the round, has a bilingual component of four classes. There are 130 students and a core of specially trained bilingual teachers in this arrangement. For many of these pupils the instructional program is a follow-up of their xperiences in a bilingual primary school. The area specialists ave created, in both English and Spanish, a delivery system for the curriculum which at this grade level is now necessarily more sophisticated and challenging.

Moreover, bilingual classes with teachers who are both bilingual and trained in English as a Second Language techniques are presently functioning.

PROGRAM DESCRIPTION E

Bilingual Instruction for Retarded Children

District 12 has been selected to provide a bilingual educational program for CRMD students. The project which was approved by the Community School Board and the Community Superintendent will provide additional services, not replace services, for students in Special Education whose native language is Spanish.

PROGRAM DESCRIPTION F

A Resource Center will be established at P.S. 1 to be the center of District 15's Bilingual Program. The Center will have seven Bilingual classes on the Kindergarten, First and Second Grade, with an estimated register of 25 children per class. Personnel in four of these classes will be funded under the Title I Program.

There will also be five Extension Schools with a Bilingual Cluster of two classes in the First and Second Grade. They will work as a team in self-contained classrooms serving 25 children per class, locations as listed under 2b.

The project is structured to teach content areas to all children in their dominant language and to provide Language Arts instruction in both English and Spanish. English as a Second Language will be taught to Spanish dominant classes and Spanish as a Second Language will be taught to English dominant classes.

Since the long term goal of this program is to develop functional bilingualism, the amount of instruction in content areas n the second language will gradually be increased in order to each a 50/50 ratio by Grade 6.

Program Objectives

1. To develop language skills in English and Spanish.

Program Description

The program in District 15 is designed to meet the needs of early childhood students in three district schools where approximately 61% of the children are of either Puerto Rican or other Spanish surnamed background. It is designed for kindergarten, first and second grade.

The specific needs to be met in this bilingual program are:

1. The development of concepts and skills relevant to each subject area in the child's dominant language particularly in reading readiness, reading achievement and mathematics.
2. The development of an English as a Second Language program.
3. The development of a Spanish as a Second Language program.
4. The development of an appreciation and knowledge of the child's cultural heritage.
5. The development of concept skills in the Spanish language arts.

Number of Pupils Served:

Spanish 225

D. Nelson Vieira, "Training Teachers for Bilingual/Bicultural Education," reprinted from 19 *Inequality in Education* 43, February, 1975

Training Teachers for Bilingual/Bicultural Education

by Nelson Vieira

The realities of bilingual/bicultural education programs do not solely nor primarily rest within the hallowed domains of good will, compassion and the mosaic view of American cultural pluralism. It is important to design the best type of program for a given school as well as to define goals in performance terminology. It is also absolutely paramount that a clear picture of its curriculum, activities and general policy regarding staffing and training be understood by the school's administrators, teachers, paraprofessionals, and PTA. Careful and honest communication about the general direction and policy of a bilingual/bicultural project can avoid misunderstanding and mistrust as well as the misuse of time, energy and money. With well-known and well-announced guidelines for structuring, scheduling, enrollment, and above all, staffing and training, there is at least the presence of a professional cohesiveness so necessary for success.

This article, dealing primarily with Portuguese programs, will examine an essential component of bilingual education projects—the staff. The discussion will relate to such items as hiring native-language-speaking teachers, language proficiency and qualifications, certification, training, teacher in-put, staff relations with the community, and continuity between training experiences and teaching. Besides being a vehicle to air out some issues that have over the last five years become only too familiar to many bilingual programs, this article is also a plea for open discussion of these issues between parents, directors, administrators, trainers and teaching staff.

Nelson Vieira, an Assistant Professor of Portuguese at Brown University, directs the Brown Bilingual Institute.

Teacher Hiring: Language Proficiency and Cultural Compatibility

The director of a bilingual education project frequently is faced with a frustrating search for teachers with pedagogical experience, the linguistic and cultural knowledge of a native-speaker, as well as the credentials needed for state certification. Administrators are frequently hard-pressed to find teachers who can function on all linguistic levels in two languages, across a variety of subject matter, and furthermore present a dossier that confirms his or her ability to do so. The kingdom of bilingual education is relatively nascent and consequently has not had enough time to nurture a hierarchy of professionals who are all encompassing in the classroom as well as on paper. Furthermore, the certification requirements, important as they are to the profession, do not properly recognize the need for native or very near-native fluency, nor do they readily compare with non-American dossiers or credentials that most native-speaking teachers from other countries have acquired. Thus, the long process of determining educational equivalents, detailing teaching experience abroad and translating dossiers can appear to be overwhelming for American directors and thereby force them to justify seeking the path of least resistance—the hiring of an American teacher, even though a suitable mechanism for evaluating that teacher's fluency in another language has not been established.

Instead of tracing the validity of foreign credentials and subsequently requesting emergency certification on the condition that a candidate follow an academic program that will enable him or her to join the ranks of certified American teachers, administrators who are often and quite understandably uninformed as to the essentials of language acquisition and teaching choose to hire those who *may* be competent in this area. Unfortunately, there can be no substitute for native or near-native fluency combined with the experience of living in another culture. The demands of a bilingual curriculum dictate the presence of superior language competency. The usage and adaptation of foreign textbooks, plus the daily exigencies of detailed explanations and other matters such as translating and adapting items for measurement, parent/teacher conferences, fostering motivation, comforting troubled students, maintaining respect and discipline via the proper social amenities, and above all, representing a good linguistic and cultural model—all of these require a command of language and culture that transcends academic, cultural and racial barriers. It is not true that foreign born or native-speaking teachers are magically instilled with the talents needed to implement the above skills and duties, but it is true that native or very near-native fluency is acquired over a period of years and emanates from one who is a product of a linguistic and cultural experience. It appears to be more feasible to train someone with solid language background than one who has the theoretical and methodological know-how but who, after a crash course in the respective language, will still not be sufficiently competent to teach in a bilingual classroom.

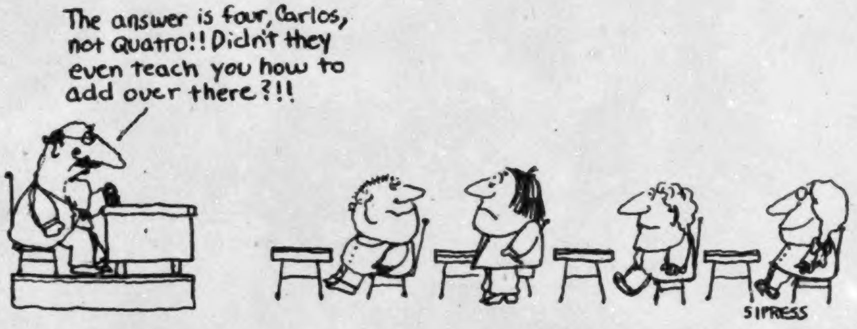
In writing job specifications, directors must spell out a priority of qualifications and hold fast to them. The importance given to language ability, cultural awareness and teaching experience cannot be overstressed. Competency and professional status go hand-in-hand and should be the mark of all teachers. However, all competent personnel should have an opportunity to acquire professional status and simultaneously make a contribution to the educational process. For example, graduates of Portuguese normal schools, many with teaching experience in Portugal, have been hired to work in bilingual programs in Providence, Rhode Island. Granted emergency certification or sometimes hired as paraprofessional aides, they have pursued bachelor's and/or master's degrees in addition to receiving in-service training for teaching in bilingual/bicultural programs.

This type of staffing must not be interpreted as a threat to American teachers. Both foreign-language-speaking and English-speaking teachers are indispensable to bilingual schooling, but all teachers need "retooling" to become language teachers as well as subject matter instructors. Training in second language methodology, the philosophy of bilingual education and applied linguistics is necessary for all who participate in a bilingual program. It is expected that a Portuguese-born teacher, for example, would require study of the American curriculum, methods and materials as well as such specifics as diagnostic reading and testing, etc. Native English-speaking teachers for the same program would require experience with English language teaching materials, knowledge of the Portuguese language and value system as well as inter-cultural sensitivity.

A project requiring that *all* of its teachers be fully bilingually versatile so that they, language-wise, may be used interchangeably in any discipline with the same students, displays an embarrassing *naivete* about language acquisition and teaching. While an accomplished coordinated bilingual person can switch language systems, a child learning to be bilingual in the atmosphere of a school cannot easily switch if his or her model embodies two languages and two cultures. This state of affairs applies particularly to the English-speaking child who has the opportunity to learn a second language *only* in school. Identity and acquisition of a language and culture can only be developed in a classroom situation if the association is consistent and relegated to an atmosphere which enhances communication in that one language. The possible outcome is a *salada mista*, or compound bilingual, one who cannot effectively separate two language systems. In order to avoid the intermingling and interference of language systems to a great extent, both teacher models must be present in a bilingual program. For the affective domain, this set-up can also nourish an awareness of the ethos of another people.

Training Courses for Bilingual Educators

Training personnel already immersed in meeting the demands of bilingual programs while regularly attending in-service courses may be exhausting, confusing, and at times, counter-productive. It is therefore preferable to institute *pre*-service programs and require contractually that teachers new to a bilingual program participate *prior* to assuming their classroom responsibilities.


The answer is four, Carlos, not Quatro!! Didn't they even teach you how to add over there?!!
SIPRESS

Cartoon by David Sipress

Though no *pre*-service course is a patent remedy for all the problems a teacher may later encounter, it can provide useful orientation for teachers new to bilingual education. Also, due to the *ad hoc* or less academically official aura of many in-service courses and workshops, teachers may interpret them as uneventful in comparison to their actual teaching assignments. In light of the above, it is recommended that director and trainer join forces to create a pre-service program that will be substantive, relevant to the teachers' school and program, and so scheduled as to allow everyone involved to devote most of his or her time and energy to the training curriculum.

The following suggestions and ideas regarding training programs stem from the philosophy of the Brown Bilingual Institute, which has been training teachers, curriculum writers, directors, principals, and paraprofessionals for the past five summers. Each participant arrives at the Institute with a teaching or school assignment, and is interviewed by an instructor in order to design a program of study to meet his or her individual needs. From a list of approximately fifteen courses, seminars, individual projects and discussion groups, a participant selects with a BBI staff member those areas of particular interest and need which will be most in tune with his or her duties during the school year. (For more detailed information about this training program write to the Brown Bilingual Institute, Box E, Brown University, Providence, Rhode Island 02912.)

In devising a training program, it is suggested that the framework of study carry the official status of university courses (i.e., official transcript credit) while catering on a very practical level to the specific needs of each participant. For example, in a course entitled "Evaluation and Construction of Specialized Language-Teaching Materials" teachers could study current and innovative bilingual materials as well as prepare their own materials with the assistance of curriculum writers and resource teachers. Instead of working in a theoretical vacuum, teachers should efficiently utilize their time with projects that will be of value to them in the upcoming school year. The structure of a training program, if too rigid, can inspire in teachers a humdrum, "credit" oriented attitude, rather than the kind of professional motivation which reflects dedication and self-improvement.

The structure, schedule and program of study in a pre-service training course must represent the articulated ideas and needs of participants at the administrative, teaching, and resource levels. In addition, the active in-put and cross-communication between these groups must be fostered. For instance, it would be valuable to have round-table discussions about issues of curriculum and student scheduling, such as the amount of time devoted to each language. This type of discussion should serve to involve teachers in policy-making, while developing a less distant relationship with administrators. The teachers will then be able to articulately assist in disseminating policy to parents. A professionally sound program is one that creates an atmosphere and provides a process wherein the staff is encouraged to verbalize opinions, and to be responsible for its implementation and successes.

An invaluable resource for soliciting community action, support and interest is the hiring and training of bilingual paraprofessionals or aides from the school's neighborhood. The personal network of one-to-one communication, so vital in ethnic communities, can be used to enhance understanding and participation in the bilingual program. The talents and suggestions of paraprofessionals and community members should be respectively appraised and voiced. Moreover, delicate public policy issues such as integrated classrooms, cultural hostility, standard vs. dialect usage, social norms, the extensive use of the home language outside the classroom (in the corridors, main office, playground and lunchroom)—all these topics must be aired to diminish the tension that may surface when a bilingual program enters an established community school or is instituted in a school system. Frequently, new and innovative programs with impressive funding are not welcomed with open arms because members of the school or community have not been properly prepared, informed, or involved in the planning. Bilingual projects fall into this category because, despite the national movement for bilingual education, these programs still have to prove themselves amid the misconceptions and doubts about language that permeate our monolingually-oriented society.

Discussing and analyzing these issues must be a part of each teacher's training, in which interpersonal communication becomes the framework for dealing with the educational and social realities of daily school life. A training program that is strictly "subject" oriented is unrealistic and superfluous. Because bilingual education is such a relatively new field, public policy issues and the bilingual school should be an integral part of the staff's training. Again, this course of action assumes that there is verbal interaction or continuity between teachers, directors, principals, curriculum writers, community members, and trainers.

In another area, that of teacher and program supervision and evaluation, director and trainer can work closely to ensure the most efficient use of staff. This component should not be relegated to outside, "cardboard" evaluators who compile voluminous reports to superficially satisfy auditors school boards, state and federal agencies. Unless we train staff and administrators to be astute and comfortable with evaluators who can and do make meaningful observations and comments, we will foster superficial and libelous programs. For example, teachers, principals or community members and parents may disagree with the language policy in a classroom but without a stated and *well-disseminated* philosophy and an evaluation of current practices, no one has recourse to any criticism or change. Although proposals spell out in specific but cumbersome and often boring behavioral terms a project's goals, very few individuals have access to this information. Those who wish to argue for curriculum change require knowledge of and practical training in the equitable channels through which they can voice their rights and opinions within the school system. This is often especially true of teachers who feel they are professionally vulnerable due to their certification status or the precariousness of their program.

Less than solid support of realistic training programs for bilingual education staff on the part of directors, school systems, or principals can jeopardize the dedication, altruism and enthusiasm found among most teachers and undermine the success of a bilingual/bicultural education program.

Degree Programs Needed

Most training programs follow the pre-service and/or in-service workshop format, because time limitations and the rapid increase in the number of bilingual education programs have dictated an immediate need for staff preparation. Degree programs in bilingual education, at the bachelor's as well as master's and doctorate levels, are the most satisfactory response to the need for trained bilingual educators. Future teachers could follow a course of study in two languages to perfect their own language skills, as well as completing a relevant curriculum for bilingual pedagogy. Only a few such degree programs exist; more must be established soon if we are to pursue our commitment to the concept of high quality on-going bilingual/bicultural education.

E. Characteristics of Different Types of Bilingual/Bicultural Education Programs, excerpted from "Coming of Age in Bilingual/Bicultural Education: A Historical Perspective" by Josue Gonzalez, 19 *Inequality in Education* 5, (February, 1975)

TYPE A PROGRAMS: ESL/Bilingual (Transitional)

1. Strict remedial/compensatory orientation.
2. Few (if any) bilingual teachers.
3. Bilingual aides relied on for mother-tongue instruction.
4. Use of home language limited to small segments of time.
5. Preponderance of "home made" curriculum materials; some may be prepared by paraprofessional staff and due to lack of direction may lack proper sequencing and/or continuity.
6. Programs have few extra-mural resources available to them for staff training, evaluation and overall capacity-building.
7. Clientele is limited to small percentages of children (usually poor and having other serious problems) who speak no English.
8. Greatest effort is in teaching English and eliminating home-language usage usually by grade 3.
9. Programs are not integrated into the on-going school curriculum. Students often participate on a haphazard "pull-out" basis.
10. Few efforts are made to involve parents in a meaningful partnership with the schools. Home language, culture and child rearing practices are often perceived as detrimental to child's performance in school.

TYPE B PROGRAMS: Bilingual Maintenance

1. Students' fluency in another language is seen as an asset to be maintained and developed.
2. Native English-speaking students are involved in the program only minimally if at all.
3. Recruiting and staff development efforts are made to increase the preparation and efficiency of bilingual staff.
4. Team teaching is often employed to maximize bilingual staff resources.
5. Much attention is given to development of English language skills but use of the home language is continued through the grades to the extent that resources make that possible.
6. Varying degrees of integration of the program into the "regular curriculum" but much of the developmental effort remains dependent on "soft money".
7. Parental involvement is recognized as a potential asset. Attention is given to community resources as sources for curricular content and programmatic direction.
8. The home language is used more extensively and systematically in the teaching of subject content areas and not merely for giving directions or class control.
9. Curriculum development, staff training and evaluation aspects of the program are more comprehensive, better planned and more adequately staffed than in Type A programs.
10. Extra-mural resources are sought out, e.g., college and university personnel, expert consultants, assistance centers, etc. In addition staff may be allowed to visit other programs and participate in conferences and other such opportunities for learning and interaction.
11. Efforts are made to reach as many non-native English speakers as possible but emphasis continues to be placed on language skill development to the exclusion of other, nonlinguistic needs of the child. Differences often occur between programs on their approach to "standard" vs. colloquial usage of the home language for instruction.

TYPE C PROGRAMS: Bilingual/Bicultural (Maintenance)

Similar to Type *B* but in addition:

1. Seeks to integrate "history and culture" of the target group as integral part of curricular content and methodology.
2. An emerging recognition of the role of cultural referents in human development is reflected and plays a key role in staff training and its orientation towards cultural atypicalness. (González, 1974)
3. Extensive staff training in history and culture of the child's ethno-linguistic group. Often, however, much confusion exists as to the *nature of culture* and the procedures for inventorying same to achieve local relevance and proper interpretation of its manifestations.
4. Programs of this type are often found in areas having professional groups with strong ethnic group identification. Consequently, they may also be characterized by strong advocacy, civil rights and community-service aspects.
5. Increasingly, more attention is placed on other aspects of school-child dysfunction. Areas of incompatibility are corollarily identified and incorporated into the program's scope. (Cárdenas, 1974)

TYPE D PROGRAMS: Bilingual/Bicultural (Restorationist)

This type of program is similar to Types *B* and *C* except that ethnic group identification goals reach higher priority levels. In this type of program a strong attempt is made to *restore* to children the option of learning the language and culture of their ancestry even though they themselves may have lost it due to assimilation.

An outstanding example of this approach is seen in the work of the Council for the Development of French in Louisiana (CODOFIL). In a cooperative effort with the French government, *coopérants* are sent to Louisiana, at the expense of the French government, to stimulate instruction in and use of the French language. (Swanson, 1974)

TYPE E PROGRAMS: Culturally Pluralistic

This approach is similar to *D*, but here the emphasis is not restricted to those students from a particular ethno-linguistic group. Instead, *all* students are involved in linguistically and culturally pluralistic schooling. The approach represents a philosophy which is diametrically opposed to that of the "melting pot" ideology. The underlying assumption is that all constituencies of education benefit from an active participation in and appreciation of each others' backgrounds.

This approach is best exemplified at the Multi-Culture Institute, a private school for children ranging in age from three to nine. At this San Francisco school the culture and history of the different groups represented in the school supply the bulk of the curriculum's content. In a recent report (NEA, 1971), the following ethnic groups were represented in the school's population and program: Jewish-American, Chinese-American, Latin-American, Afro-American, Philippino, Welsh, Native-American, Canadian, French, German, Scottish, Irish and Swedish.

The preceding is, admittedly, an oversimplification of current trends. Many programs presently in operation incorporate characteristics of more than one type of approach.

The significant fact to be kept in mind is that increasingly the trend is towards the more comprehensive programs and away from the more primitive (Type A) programs although this thrust is by no means universally accepted.